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By _____, Deputy
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7 on behalf of the State of California,
8 and others similarly situated and aggrieved

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

12 DARIUS WALKER, on behalf of the State of
California, and others similarly situated and
aggrieved,

13 Plaintiff,

14
15 v.

16 PEAK TECHNICAL SERVICES, INC., a
Pennsylvania corporation; PEAK
17 TECHNICAL SERVICES L.P., a
Pennsylvania limited partnership; EMSAR
18 BIOMEDICAL SERVICES, INC., an Ohio
corporation; CSA SERVICES SOLUTIONS,
19 LLC, a Delaware limited liability company;
CSA FRANCHISING, LLC, a Delaware
20 limited liability company; and DOES 1-100,
inclusive,

21 Defendants.
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Case No.:

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

BY FAX

1 Plaintiff, DARIUS WALKER (“PLAINTIFF”), an individual on behalf of PLAINTIFF, the
2 State of California, and all other Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants PEAK TECHNICAL SERVICES, INC., a Pennsylvania corporation;
4 PEAK TECHNICAL SERVICES L.P., a Pennsylvania limited partnership; EMSAR
5 BIOMEDICAL SERVICES, INC., an Ohio corporation; CSA SERVICES SOLUTIONS, LLC, a
6 Delaware limited liability company; CSA FRANCHISING, LLC, a Delaware limited liability
7 company; and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”).
8 PLAINTIFF is informed and believes and thereon alleges as follows:

9 **INTRODUCTION**

10 1. This is a representative action filed by PLAINTIFF on behalf of PLAINTIFF, all
11 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California’s
12 Private Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties
13 (75% payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
14 Employees) for DEFENDANTS’ violations of the California Labor Code as alleged below.

15 **JURISDICTION AND VENUE**

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

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

24 **THE PARTIES**

25 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
26 California and a citizen of the State of California.

27 5. PLAINTIFF was employed by DEFENDANTS in the State of California as a non-
28 exempt employee from in or around December 2020 until on or around March 20, 2022.

1 6. PLAINTIFF worked for DEFENDANTS as a service technician, equipment tester
2 and/or similar title(s) from in or around December 2020 until his date of termination, on or around
3 March 20, 2022. DEFENDANTS assigned PLAINTIFF to work out of various hospitals located in
4 California, including but not limited to, Sutter Medical Center, on Capitol Avenue, in Sacramento,
5 California. PLAINTIFF's job duties included but were not limited to, performing tests and warranty
6 repairs on various medical equipment, such as, but not limited to, ventilators and EKG machines.

7 7. DEFENDANTS are either a Pennsylvania corporation and/or Pennsylvania limited
8 partnership and/or Ohio corporation and/or Delaware limited liability company that, at all relevant
9 times, were authorized to do business within the State of California and are doing business in the
10 State of California.

11 8. Defendants EMSAR BIOMEDICAL SERVICES, INC. ("EMSAR"), CSA
12 SERVICES SOLUTIONS, LLC, and CSA FRANCHISING, LLC ("CSA") together and/or as
13 predecessors and successors in interest own, operate, or otherwise manages a business specializing
14 in biomedical equipment service and repair and/or at one time during the relevant statutory period
15 owned, operated, or otherwise managed a business specializing in biomedical equipment service
16 and repair. DEFENDANTS PEAK TECHNICAL SERVICES, INC., and PEAK TECHNICAL
17 SERVICES L.P. (collectively referred to as "PEAK") own, operate, and/or otherwise manage a
18 business that specializes in supplying labor to, including but not limited to, businesses specializing
19 in biomedical equipment service and repair, including DEFENDANTS EMSAR BIOMEDICAL
20 SERVICES INC. ("EMSAR"), CSA SERVICES SOLUTIONS LLC, and CSA FRANCHISING,
21 LLC ("CSA").

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

28 10. PLAINTIFF is further informed and believes that, at all relevant times, each
3
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

10 **JOINT LIABILITY**

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

28 12. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and other
4
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

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

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

26 15. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
27 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
28 time-keeping practices, meal and rest periods, reimbursement of business expenses and other

1 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
2 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
3 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively
4 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of
5 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
6 and other Aggrieved Employees' employment with or without cause. Upon information and belief,
7 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
8 writing the details of their compensation, and the manner in which they were to take meal and rest
9 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
10 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
11 collectively would evaluate their wage rates.

12 16. Moreover, based on information and belief, PEAK hired PLAINTIFF and entered
13 into a written employment agreement with PLAINTIFF. During PLAINTIFF's employment, PEAK
14 maintained control over many aspects of PLAINTIFF's employment, including, among other things,
15 having the authority to discipline PLAINTIFF, change PLAINTIFF's job assignment, change
16 PLAINTIFF's work hours, change PLAINTIFF's rates of pay, and to terminate PLAINTIFF's
17 employment.

18 17. In addition, when PLAINTIFF was first hired, PEAK provided PLAINTIFF with
19 orientation and training materials. PEAK issued PLAINTIFF written policies concerning meal
20 periods, rest breaks, timekeeping, hours worked, and payment of PLAINTIFF's wages, with which
21 PLAINTIFF was required to comply. Based on information and belief, among other things, these
22 policies provided that PLAINTIFF's weekly time records be submitted to PEAK, and PEAK was
23 supposed to process PLAINTIFF's time records and pay PLAINTIFF for all hours worked. PEAK
24 exercised ultimate control over the payment of PLAINTIFF's wages, as PEAK issued PLAINTIFF
25 her paychecks. Finally, PEAK directed PLAINTIFF to comply with EMSAR's and/or CSA's
26 policies and directions. PLAINTIFF is informed and believes that PEAK exercised the same control
27 over, applied the same policies and practices, and engaged in the same acts and omissions with
28 regard to the other Aggrieved Employees.

1 18. EMSAR and/or CSA similarly suffered or permitted PLAINTIFF to work for them
2 or engaged PLAINTIFF to work for them. PLAINTIFF is informed and believes that EMSAR and/or
3 CSA entered into a written agreement with PEAK, pursuant to which EMSAR and/or CSA paid
4 PEAK to provide it with workers, including PLAINTIFF, to conduct EMSAR's and/or CSA's
5 business operations - namely, to service and/or repair medical equipment at assigned healthcare
6 facilities. EMSAR and/or CSA suffered or permitted PLAINTIFF to work at EMSAR and/or CSA
7 for the entirety of PLAINTIFF's employment.

8 19. EMSAR and/or CSA further exercised control over PLAINTIFF's wages, hours and
9 working conditions. EMSAR and/or CSA also: (1) set PLAINTIFF's work hours and provided
10 PLAINTIFF with PLAINTIFF's work schedule; (2) provided PLAINTIFF with policies regarding
11 meal periods and rest breaks, with which PLAINTIFF was required to comply; (3) directly
12 supervised PLAINTIFF's work through its employees; (4) assigned PLAINTIFF job duties and
13 trained PLAINTIFF on said job duties; (5) exercised authority to reprimand and counsel
14 PLAINTIFF regarding any work performance and other issues; (6) exercised authority to end
15 PLAINTIFF's work assignment at any time, which essentially equated to a termination of
16 employment as PLAINTIFF was not guaranteed any other job assignments; (7) required
17 PLAINTIFF to use its timekeeping system for purposes of recording time worked; (8) determined
18 whether and when PLAINTIFF would receive meal periods and rest breaks; (9) subjected
19 PLAINTIFF to unlawful schedules for taking meal periods and rest breaks; and, (10) was
20 responsible for recording when PLAINTIFF began and ended work shifts. On information and
21 belief, EMSAR and/or CSA further written policies and practices and guidelines governing
22 PLAINTIFF's working conditions with which PLAINTIFF was required to comply. PLAINTIFF is
23 informed and believes that EMSAR and/or CSA exercised the same control over, applied the same
24 policies and practices, and engaged in the same acts and omissions with regard to the other
25 Aggrieved Employees.

26 20. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
27 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
28 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved

1 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
2 PLAINTIFF seeks relief in this Complaint.

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

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

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

15 **PAGA ALLEGATIONS**

16 24. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
17 of the State of California and all Aggrieved Employees, regarding violations of the California Labor
18 Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include the
19 following subcategories and are referred to collectively as the "Aggrieved Employees."

- 20 i. PEAK Direct Hires: All non-exempt workers who were directly employed by PEAK–
21 regardless of where those non-exempt workers were assigned or staffed to work – in
22 California at any time from one year plus 65 days from the filing of the initial Complaint
23 through the present ("PAGA Period").
- 24 ii. EMSAR/CSA Temporary Hires: All non-exempt workers who were assigned/staffed to
25 work at EMSAR and/or CSA by PEAK and/or any other staffing/temporary service
26 agencies in California at any time from one year plus 65 days from the filing of the initial
27 Complaint through the present ("PAGA Period").
- 28 iii. EMSAR/CSA Direct Hires: All non-exempt workers who were directly employed by

1 EMSAR and/or CSA in California at any time from one year plus 65 days from the filing
2 of the initial Complaint through the present (“PAGA Period”).

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

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

15 26. PLAINTIFF, on January 17, 2023, through counsel, gave written notice and on
16 February 15, 2023, gave written amended notice, by online filing with the California Labor and
17 Workforce Development Agency (“LWDA”) informing it that DEFENDANTS failed to comply
18 with California’s labor laws with regard to the allegations alleged in this Complaint (“PAGA
19 Notice”).

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

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

26 **FACTUAL ALLEGATIONS**

27 29. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
28 worked for DEFENDANTS in the State of California.

1 30. At all times referenced herein, DEFENDANTS exercised control over PLAINTIFF
2 and Aggrieved Employees, and suffered and/or permitted them to work.

3 31. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
4 PLAINTIFF worked for DEFENDANTS as a service technician, equipment tester and/or similar
5 title(s) from in or around December 2020 until his date of termination, on or around March 20, 2022.
6 DEFENDANTS assigned PLAINTIFF to work out of various hospitals located in California
7 including but not limited to, Sutter Medical Center, on Capitol Avenue, in Sacramento, California.
8 PLAINTIFF's job duties included but were not limited to, performing tests and warranty repairs on
9 various medical equipment, such as, but not limited to, ventilators and EKG machines. PLAINTIFF
10 regularly worked at least eight (8) hours per day, at least five (5) days per week.

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

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

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

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

1 the clock work policies and/or practices. For example, DEFENDANTS required PLAINTIFF to
2 keep track of how many different service and/or repair jobs he performed each shift and would pay
3 PLAINTIFF according to an estimated / expected time for completion of each repair / job, resulting
4 in consistent off-the-clock work and the underpayment of wages owed to PLAINTIFF. For instance,
5 at times, PLAINTIFF was required to spend two hours to repair a unit, however, DEFENDANTS
6 would only pay him for 45 minutes. PLAINTIFF estimates this resulted in an average of at least
7 several hours of off-the-clock work each workweek.

8 36. Moreover, based on information and belief, Aggrieved Employees were not
9 compensated for off-the-clock work tasks, such as, but not limited to, all time spent preparing for
10 jobs and/or time spent between jobs and/or waiting time, which resulted in the underpayment of
11 wages owed to Aggrieved Employees. Based on information and belief, Aggrieved Employees were
12 also pressured to complete at least some of their work tasks off-the-clock in order to meet
13 DEFENDANTS' goals and expectations. For example, based on information and belief, Aggrieved
14 Employees were also required to complete off-the-clock work outside of scheduled shifts due to
15 work-related phone calls and/or messages they received to their personal phones and were required
16 to respond to, including but not limited to, communications from supervisors and/or other Aggrieved
17 Employees regarding scheduling and/or other work tasks, resulting in the underpayment of wages
18 owed to Aggrieved Employees. Based on information and belief, Aggrieved Employees were
19 required to perform other pre-shift and/or post-shift work that was neither recorded nor
20 compensated. For example, on information and belief, Aggrieved Employees were at times required
21 to stand in line behind other employees to enter their assigned facility and/or undergo
22 security/temperature screenings without being compensated for this time spent under
23 DEFENDANTS' control. This off-the-clock work, including but not limited to, undergoing
24 security/temperature screenings and/or waiting to enter the facility after arriving at work, was not
25 compensated, resulting in the underpayment of minimum and overtime wages owed to Aggrieved
26 Employees.

27 37. Moreover, PLAINTIFF and other Aggrieved Employees were required to perform
28 other off-the-clock work for which they were not compensated. For example, PLAINTIFF was

1 directed by DEFENDANTS to complete weekly paperwork relating to recalls, inspections and/or
2 repairs that PLAINTIFF was required to perform on the medical equipment. DEFENDANTS told
3 PLAINTIFF he had to perform this work off-the-clock. PLAINTIFF estimates this time spent
4 reviewing and/or completing work-related paperwork resulted in at least four (4) to five (5) hours
5 of off-the-clock work per week and the significant underpayment of wages owed to PLAINTIFF.

6 38. Based on further information and belief, at times, DEFENDANTS instituted a piece-
7 rate-based compensation scheme that resulted in pay periods during which Aggrieved Employees
8 were denied the minimum wage for all hours worked. For example, on information and belief, at
9 times, DEFENDANTS paid Aggrieved Employees on a strictly piece-rate basis (e.g., per
10 repair/service job and/or using a flagged hour basis), at least during some pay periods, during the
11 relevant time period. However, based on information and belief, DEFENDANTS failed to separately
12 compensate Aggrieved Employees for all non-piece rate related activities/all non-productive time,
13 including but not limited to, all rest breaks and/or time spent preparing/setting up for jobs, time
14 spent completing paperwork, waiting between jobs and tasks and/or other waiting time, and/or
15 performing work duties that otherwise fall outside of the piece-rate pay criteria. DEFENDANTS'
16 failure to separately compensate Aggrieved Employees for their rest periods and/or other non-
17 productive time and/or failure to compensate them at the correct rates for all non-productive time
18 including rest periods resulted in the failure to pay Aggrieved Employees for all hours worked and
19 violations of California wage and hour laws, including but not limited to, Labor Code sections 226.2
20 and/or 1197. Based on information and belief, DEFENDANTS further failed to include this
21 information on these employees' wage statements required by Labor Code section 226.2.

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

27 40. Based in information and belief, DEFENDANTS implemented a time-rounding
28 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of

1 compensable time because the time-rounding system implemented by DEFENDANTS would
2 almost always, if not always, result in understating actual compensable work time.

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

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

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

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

23 45. Based on information and belief, DEFENDANTS sometimes paid Aggrieved
24 Employees multiple base rates of pay in one workweek but failed to incorporate all multiple base
25 rates of pay into the regular rate of pay for purposes of calculating the owed overtime rate(s),
26 resulting in the miscalculation and underpayment of overtime wages owed to Aggrieved Employees.

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

1 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
2 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
3 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
4 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
5 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
6 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
7 completely. For example, PLAINTIFF was consistently pressured to complete his work duties
8 according to a designated schedule such that any meal periods were only taken once tasks were
9 completed, and/or as time permitted. As such, PLAINTIFF was consistently forced to take late,
10 interrupted, shortened meal periods, and/or work through his meal periods completely due to lack
11 of relief workers, the need to complete repairs, service equipment and/or complete other work tasks.
12 Based on information and belief, other Aggrieved Employees were also consistently forced to take
13 late, interrupted, shortened meal periods, and/or work through his meal periods completely due to
14 lack of relief workers, the need to complete repairs, service equipment and/or complete other work
15 tasks.

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

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

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

28 50. Based on information and belief, despite DEFENDANTS' failure to provide lawful

1 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
2 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
3 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
4 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
5 Employees did not receive lawful meal periods.

6 51. Moreover, based on information and belief, Aggrieved Employees who worked shifts
7 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.
8 For example, when PLAINTIFF worked more than ten hours in a shift, PLAINTIFF was not
9 provided with a second meal period and any first meal period was often worked through and/or
10 otherwise noncompliant.

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

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

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

25 55. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
26 additional hour of wages at their respective regular rates of compensation for each workday a lawful
27 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
28 each workday a lawful meal period was not provided and/or failed to pay the proper meal period

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

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

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

12 **58.** Based on information and belief, DEFENDANTS did not have a have a compliant
13 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
14 practice. For example, PLAINTIFF was consistently pressured to complete his work duties
15 according to a designated schedule such that any rest periods were only taken once tasks were
16 completed, and/or as time permitted. As such, PLAINTIFF was consistently forced to take
17 interrupted and/or shortened rest periods, and/or work through his rest periods completely due to
18 lack of relief workers, the need to complete repairs, service equipment and/or complete other work
19 tasks. Based on information and belief, PLAINTIFF was rarely, if ever, afforded a legally compliant
20 rest period during his employment.

21 **59.** Moreover, based on information and belief, Aggrieved Employees were required to
22 remain tethered to their worksites and/or work communication devices during purported rest
23 periods.

24 **60.** Based on information and belief, any purported rest periods were interrupted, cut
25 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of
26 their job duties, and/or commentary from supervisors pressuring them to skip rest periods
27 completely and/or take non-compliant rest periods.

28 **61.** Moreover, based on information and belief, DEFENDANTS failed to provide any

1 form of a third rest period on shifts lasting longer than ten hours.

2 62. Based on information and belief, DEFENDANTS implemented policies and/or
3 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
4 DEFENDANTS' control during rest periods.

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

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

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

23 66. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
24 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
25 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
26 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
27 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
28 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or

1 other off-the-clock work policies and practices described above) which results in a violation of
2 Labor Code section 226(a).

3 67. Based on information and belief, wage statements issued by DEFENDANTS failed
4 to list all applicable hourly rates in effect during the pay period and the corresponding number of
5 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
6 Code section 226(a)(9).

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

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

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

17 71. Additionally, as to Aggrieved Employees compensated on a piece-rate basis,
18 DEFENDANTS failed, and continues to fail to issue accurate wage statements by not documenting
19 the total hours of compensable rest and/or recovery periods and/or for other non-productive time,
20 the rates of compensation for these hours, and the gross wages paid for these hours, in violation of,
21 including but not limited to California Labor Code section 226(a) and/or 226.2

22 72. Based on further information and belief, wage statements issued by DEFENDANTS
23 fail to list the number of piece-rate units earned and/or any applicable piece rate for those Aggrieved
24 Employees compensated on a piece-rate basis, in violation of Labor Code section 226(a)(3).

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

28 74. **Failure to Produce Employment Records.** Based on information and belief,

1 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
2 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
3 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF sent a
4 written request for payroll and personnel records to DEFENDANTS. Yet, DEFENDANTS failed to
5 timely produce complete records within the time periods delineated by California labor law. Based
6 on information and belief, DEFENDANTS failed and continues to fail to timely produce complete
7 payroll and personnel records when requested by other Aggrieved Employees. Based on information
8 and belief, DEFENDANTS failed and continue to fail to timely produce complete time, pay, and
9 personnel records when requested by other Aggrieved Employees.

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

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

24 77. **Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an
25 employer to pay employees compensated on a piece-rate basis separately for rest and recovery
26 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an
27 employer to include on the wage statements for these employees the total hours of compensable rest
28 and recovery period, the total hours for other non-productive time, the rates of compensation for

1 these hours, and the gross wages paid for these hours. In addition, the statute requires that employees
2 shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the
3 higher of: (i) an average hourly rate determined by dividing the total compensation for the
4 workweek, exclusive of compensation for rest and recovery periods and any premium compensation
5 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,
6 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to
7 employees compensated on a commission basis.

8 78. During the relevant period, DEFENDANTS failed to comply with Labor Code
9 section 226.2. Specifically, based on information and belief, DEFENDANTS failed to compensate
10 Aggrieved Employees who were paid on a piece rate (e.g., per repair/per service) and or commission
11 basis separately for the rest periods and nonproductive time, and/or failed to pay them for this time
12 at the correct rates. Based on information and belief, DEFENDANTS further failed to include the
13 information on these employees' wage statements required by this statute.

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

20 80. Based on information and belief, DEFENDANTS shifted the costs of doing business
21 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
22 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
23 including but not limited to uniforms, work clothing/shoes, protective equipment/safety gear (e.g.,
24 gloves and/or face masks) and/or the use of Aggrieved Employees' personal mobile phone and data
25 usage for work-related purposes, including but not limited to, receiving and responding to work
26 related messages and/or phone calls. For example, on information and belief, PLAINTIFF and other
27 Aggrieved Employees received work-related calls/messages to their personal phones from managers
28 and/or supervisors and/or other employees regarding scheduling and other work tasks. Moreover,

1 based on information and belief, Aggrieved Employees were also required to use and did use
2 personal devices to perform work duties at home/remotely, such as, but not limited to, reviewing
3 and/or completing work-related paperwork and/or other documents as mandated by
4 DEFENDANTS, however DEFENDANTS failed to provide reimbursement / full reimbursement
5 for expenses incurred by Aggrieved Employees as a result of working for DEFENDANTS remotely
6 and/or from their homes, including but not limited to, cost of internet service, home electricity, cost
7 of additional memory and/or virus software for home computer / home computer use, among other
8 business expenses associated with remote work required by DEFENDANTS.

9 81. Additionally, Aggrieved Employees were not reimbursed for the business use of their
10 personal vehicles, including but not limited to, mileage, wear and tear, and/or gas when they were
11 required to drive between job sites/facilities. For example, PLAINTIFF was required to use his
12 personal vehicle to drive between DEFENDANTS' various job sites but was not provided any and/or
13 full reimbursement for DEFENDANTS' business use of his personal vehicle. While at times
14 DEFENDANTS purported to compensate for vehicle-related expenses, any amount offered fell far
15 below the Internal Revenue Service (IRS) mandated per mile compensation for the relevant time
16 period. As such, DEFENDANTS failed to compensate Aggrieved Employees at the Internal
17 Revenue Service (IRS) mandated per mile compensation rate for the relevant period. Based on
18 further information and belief, at times, Aggrieved Employees were at times required to supply
19 (purchase and/or maintain) their own hand tools they required to perform their assigned job duties,
20 however, they did not receive any and/or full reimbursement from DEFENDANTS for the expenses
21 incurred in connection therewith.

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

27 83. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
28 for all reasonable expenses associated with carrying out their duties required that Aggrieved

1 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
2 2802.

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

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

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

26 87. Upon information and belief, DEFENDANTS failed and continue to fail to comply
27 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
28 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick

1 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
2 wages.

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

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

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

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

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

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

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

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

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

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

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

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

25 98. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

26 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

27 99. Based on information and belief, DEFENDANTS required Aggrieved Employees to
28 agree in writing to unlawful conditions of employment including but not limited to unlawful

1 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
2 violation of Labor Code section 432.5.

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

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

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

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

1 section 432.5.

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

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

10 106. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
11 condition of employment, DEFENDANTS violated Labor Code section 432.5.

12 Unlawful Inquires into Criminal History

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

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

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

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

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1 employee begins and ends each work period (including meal periods) and split intervals; total hours
2 worked by the employee; all deductions; gross wages earned; and net wages earned.

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

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

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

25 **Meal Period Violations**

26 118. California law requires employers to provide employees a duty-free, uninterrupted
27 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and
28 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and

1 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
2 *Court* (2012) 53 Cal.4th 1004.

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

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

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

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

27 123. Based on information and belief, DEFENDANTS had and continue to have a policy
28 of rounding the start and end times of employees’ meal periods and/or automatically deducting thirty

1 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
2 Aggrieved Employees did not receive compliant meal periods.

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

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

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

14 127. These unlawful meal period policies and practices result in violations of Labor Code
15 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
16 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
17 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
18 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

19 **Rest Period Violations**

20 128. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
21 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
22 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
23 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
24 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
25 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
26 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
27 1029). The rest period requirement obligates employers to permit and authorize employees to take
28 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control

1 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
2 257. If the employer fails to provide any required rest period, the employer must pay the employee
3 one hour of pay at the employee's regular rate of compensation for each workday the employer did
4 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
5 applicable IWC Wage Order, §12(B).

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

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

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

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

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

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

10 **Minimum and Overtime Wage Violations**

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

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

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

1 meal periods, and/or other otherwise off-the-clock work (described above), and/or other unlawful
2 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

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

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

11 140. 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.

15 141. 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, shift differentials, and/or other non-discretionary
18 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
19 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
20 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
21 other Aggrieved Employees.

22 142. 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 **Violation of Labor Code Section 226.2**

27 143. Labor Code section 226.2 requires an employer to pay employees compensated on a
28 piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any

1 piece-rate pay. This statute further requires an employer to include on the wage statements for these
2 employees the total hours of compensable rest and recovery period, the total hours for other non-
3 productive time, the rates of compensation for these hours, and the gross wages paid for these hours.
4 In addition, the statute requires that employees shall be compensated for rest and recovery periods at
5 a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by
6 dividing the total compensation for the workweek, exclusive of compensation for rest and recovery
7 periods and any premium compensation for overtime, by the total hours worked during the
8 workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case
9 law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

10 144. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
11 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
12 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
13 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
14 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
15 226.2.

16 **Statutory Wage Violations**

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

28 **Refusal to Make Payment**

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

9 **Standard Conditions of Labor Violations**

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

18 **Business Expense Violations**

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

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

8 150. Further, "any contract or agreement, express or implied, made by any employee to
9 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
10 any employee or his personal representative of any right or remedy to which he is entitled to under
11 the laws of this State." *See* Cal. Lab. Code section 2804.

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

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

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

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

25 155. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
26 Employees have suffered injury in that they were not completely reimbursed as mandated by
27 California law.

28 156. Despite being aware of these business expenses, DEFENDANTS failed to reimburse

1 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
2 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
3 Code § 2802 and the applicable Wage Order.

4 **Wage Statement Violations**

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

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

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

1 compensation earned during the pay period into the regular rate of pay for purposes of calculating
2 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
3 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

11 161. Based on information and belief, wage statements issued by DEFENDANTS failed
12 to list all applicable hourly rates in effect during the pay period and the corresponding number of
13 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
14 Code section 226(a)(9).

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

19 163. Based on information and belief, wage statements issued by DEFENDANTS failed
20 to list the inclusive dates of the pay period.

21 164. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
22 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
23 Employees over whether they received all wages owed to them.

24 165. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
25 they could not easily determine whether they received all wages owed to them and whether they
26 were paid for all hours worked.

27 166. Moreover, as a result of DEFENDANTS’ failure to list the correct name and/or
28 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered

1 injury as they could not contact their employer regarding any question(s) they had about wages paid.

2 167. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
3 Aggrieved Employees with accurate, itemized wage statements.

4 168. Additionally, as to Aggrieved Employees compensated on a piece-rate basis,
5 DEFENDANTS failed, and continues to fail to issue accurate wage statements by not documenting
6 the total hours of compensable rest and/or recovery periods and/or for other non-productive time,
7 the rates of compensation for these hours, and the gross wages paid for these hours, in violation of,
8 including but not limited to California Labor Code section 226(a) and/or 226.2

9 169. Based on further information and belief, wage statements issued by DEFENDANTS
10 fail to list the number of piece-rate units earned and/or any applicable piece rate for those Aggrieved
11 Employees compensated on a piece-rate basis, in violation of Labor Code section 226(a)(3).

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

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

24 **Seating Violations**

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

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

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

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

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

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

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

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

21 177. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
22 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
23 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
24 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
25 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
26 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
27 Aggrieved Employee, results in a separate civil penalty.

28 **Sick Leave Violations**

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

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

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

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

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

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

27 184. On information and belief, PLAINTIFF alleges that all of these practices were
28 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

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

24 **Untimely Payment of Final Wages**

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

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

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

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

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

19 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

26 194. The California Labor Code places certain procedural and substantive limits on an
27 employers’ ability to conduct employee background checks and on how employers can use the
28 information they obtain through those background checks. Labor Code section 1024.5 states that

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

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

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

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

22 198. Based on further information and belief, DEFENDANTS knew that requiring
23 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
24 condition of obtaining and/or holding employment was unlawful.

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

27 Unlawful Inquires into Criminal History

28 200. Labor Code section 432.7 prohibits an employer from asking applicants about past

1 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
2 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
3 convictions on its employment application, in violation of California law.

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

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

14 203. Under the provisions of PAGA and the above mentioned Labor Code sections,
15 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.2,
16 226.7, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1,
17 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
18 interpretations of these laws by California Courts and administrative bodies, as well as any other
19 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: May 9, 2023

CROSNER LEGAL, PC

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