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

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SANTA CLARA**

15 CHRISTOPHER PUGA, on behalf of the
16 State of California, and others similarly
17 situated and aggrieved,

18 Plaintiff,

19 v.

20 BIG 5 CORP., a Delaware Corporation;
21 BIG 5 SPORTING GOODS
22 CORPORATION, a Delaware corporation;
23 and DOES 1-100, inclusive,

24 Defendants.

Case No.: **23CV412953**

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

1 Plaintiff, CHRISTOPHER PUGA (“PLAINTIFF”), an individual on behalf of the State of
2 California, and all other Aggrieved Employees (as defined below), hereby files this Complaint
3 against Defendants BIG 5 CORP., a Delaware Corporation; BIG 5 SPORTING GOODS
4 CORPORATION, a Delaware corporation; and DOES 1-100, inclusive, (collectively referred to
5 herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

23 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
24 California and a citizen of the State of California. At all relevant times, PLAINTIFF was a non-
25 exempt employee. However, based on information and belief, at times DEFENDANTS
26 misclassified PLAINTIFF as an exempt employee and paid him on a salary basis. At other times,
27 DEFENDANTS correctly classified PLAINTIFF as a non-exempt employee. At times, PLAINTIFF
28 worked for DEFENDANTS remotely from his home, and at other times, PLAINTIFF worked at

1 DEFENDANTS' offices including but not limited to DEFENDANTS' location in El Segundo,
2 California. PLAINTIFF worked for DEFENDANTS from in or around mid 2021 through in or
3 around March 2022.

4 5. PLAINTIFF regularly worked for DEFENDANTS as a human resources clerk and/or
5 similar title/position in the human resources department.

6 6. DEFENDANTS are Delaware corporation that, at all relevant times, was authorized
7 to do business within the State of California and is doing business in the State of California.

8 7. DEFENDANTS own, operate, or otherwise manage sporting goods companies that
9 sell and distribute athletic apparel, shoes, and/or equipment with hundreds of retail locations
10 throughout approximately 11 western states.

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

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

27 **JOINT LIABILITY**

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

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

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

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

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

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

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

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

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

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

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

PAGA ALLEGATIONS

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

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

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

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

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

10 21. On January 11, 2023, PLAINTIFF, through counsel, gave written notice by online
11 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
12 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
13 in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via
14 certified mail.

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

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

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

27 **FACTUAL ALLEGATIONS**

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

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

4 26. PLAINTIFF was employed by DEFENDANTS. Based on information and belief, at
5 times, DEFENDANTS misclassified PLAINTIFF as an exempt employee and compensated
6 PLAINTIFF on a salaried basis with a base salary rate of \$3,033.33 per month and eventually a base
7 salary rate of \$3,120 per month. Based on information and belief, at times during the relevant period,
8 PLAINTIFF was correctly classified as a non-exempt employee and compensated on an hourly basis
9 with an hourly rate of \$18 per hour, but only for time counted by DEFENDANTS as hours worked.

10 27. At all relevant times, PLAINTIFF was a non-exempt employee irrespective of
11 DEFENDANTS' classification.

12 28. PLAINTIFF regularly worked at least eight (8) hours per day, at least five (5) days
13 per week.

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

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

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

1 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
2 the clock work policies and/or practices. For example, PLAINTIFF was required to perform pre-
3 shift off-the-clock work that was not recorded and not compensated. For example, prior to beginning
4 a scheduled shift, PLAINTIFF was required to start and/or boot all of DEFENDANTS' computer
5 systems, phone systems, and/or software so as to have all systems running at the start of the
6 scheduled shift. Moreover, at times, PLAINTIFF was required to log into DEFENDANTS' software
7 program which would first generate a security code that was sent to PLAINTIFF's personal
8 cellphone. PLAINTIFF had to wait to receive the security code and then use the code to log into
9 DEFENDANTS' computer/software systems in order to begin his scheduled shift. This process took
10 at least three minutes to complete prior to beginning a scheduled shift. This work was not recorded
11 and not compensated.

12 32. Moreover, PLAINTIFF completed at least an additional thirty (30) minutes of pre-
13 shift off-the-clock work on a daily basis, due to the heavy workload assigned by DEFENDANTS.
14 PLAINTIFF was pressured to complete this work without increasing his total hours worked and as
15 such, DEFENDANTS forced PLAINTIFF to complete at least some of his job duties while off-the-
16 clock in order to meet DEFENDANTS' expectations and demands. Based on information and belief,
17 at times, PLAINTIFF was required to respond to work-related phone calls and/or communications
18 while off-the-clock. This work was not recorded and not compensated.

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

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

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

6 35. Based on information and belief, some of DEFENDANTS Aggrieved Employees
7 were misclassified as exempt employees and were not paid for all hours worked due to
8 DEFENDANTS' misclassification scheme. Namely, DEFENDANTS' had/has a policy and practice
9 of misclassifying some Aggrieved Employees as exempt, further failing to pay them for all hours
10 worked, in violation of California law, including but not limited to California's minimum wage
11 laws. For example, based on information and belief, at times, DEFENDANTS misclassified
12 PLAINTIFF as an exempt employee to try to evade California wage and hour laws including but
13 not limited to, payment of minimum and overtime wages and provision of meal and rest periods
14 even though PLAINTIFF did not satisfy any test for exemption under California law. For example,
15 PLAINTIFF did not regularly exercise discretion/independent judgment in his job and typically
16 spent more than fifty percent of his workday performing non-exempt duties. PLAINTIFF's duties
17 involved clerical work rather than invention, imagination, originality, or talent in a recognized field
18 or artistic or creative endeavor. Moreover, when paid on a salary basis, PLAINTIFF did not earn a
19 salary equivalent to at least twice the state minimum wage for full-time work. Based on further
20 information and belief, other Aggrieved Employees that were misclassified as exempt were also not
21 compensated with a monthly salary that equated to twice the California minimum wage rate. See,
22 Labor Code section 515 and Cal. Code of Regs., tit. 8, § 11040 [providing that, for each exempted
23 category, the employee must earn "a monthly salary equivalent to no less than two (2) times the
24 state minimum wage for full-time employment"]. Based on information and belief, DEFENDANTS
25 misclassified some Aggrieved Employees as salaried/exempt even though those Aggrieved
26 Employees spent more than fifty percent of their workdays performing non-exempt job duties, did
27 not regularly exercise discretion and independent judgment on the job, and/or did not otherwise
28 satisfy any test for exemption under California law.

1 36. Based on information and belief, PLAINTIFF and other Aggrieved Employees that
2 were paid on a salary basis and/or otherwise misclassified as exempt were also denied all owed
3 minimum and overtime wages due to DEFENDANTS' misclassification scheme.

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

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

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

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

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

28 42. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently

1 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
2 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
3 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
4 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
5 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
6 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
7 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
8 completely. For example, based on information and belief, PLAINTIFF regularly took late meal
9 periods due to pre-shift off-the-clock work that was not taken into account when scheduling his meal
10 periods. Based on information and belief, at times, purported meal periods were interrupted and/or
11 cut short due to PLAINTIFF's need to answer work-related phone calls and/or attend to other job
12 duties.

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

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

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

25 46. Based on information and belief, despite DEFENDANTS' failure to provide lawful
26 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
27 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
28 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal

1 periods (including short and/or interrupted meal periods and/or meal periods restricted to
2 DEFENDANTS' premises), despite having actual and/or constructive knowledge that PLAINTIFF
3 and other Aggrieved Employees did not receive lawful meal periods.

4 47. Moreover, based on information and belief, Aggrieved Employees who worked shifts
5 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

6 48. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
7 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
8 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
9 did DEFENDANTS have any sort of compliant policy in practice.

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

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

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

27 52. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
28 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every

1 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
2 middle of the work period, as required by law.

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

7 54. Based on information and belief, DEFENDANTS did not have a have a compliant
8 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
9 practice. Based on information and belief, PLAINTIFF's rest periods were late due to unaccounted
10 pre-shift off-the-clock work, and/or were interrupted and/or cut short due to his need to answer
11 work-related calls during purported rest periods and/or complete other work tasks.

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

16 56. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
17 lasting longer than ten hours.

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

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

24 59. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
25 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
26 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
27 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
28 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,

1 shift differential pay, and/or other non-discretionary compensation into the regular rate of
2 compensation for purposes of calculating the owed rest period premium.

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

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

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

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

28 **64.** Based on information and belief, wage statements issued by DEFENDANTS failed

1 to list all applicable hourly rates in effect during the pay period and the corresponding number of
2 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

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

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

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

12 68. **Failure to Produce Employment Records.** Based on information and belief,
13 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
14 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
15 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, on March 17, 2022,
16 PLAINTIFF sent a request for payroll and personnel records to DEFENDANTS. Yet,
17 DEFENDANTS failed to timely produce complete records within the time periods delineated by
18 California labor law, including but not limited to time records. Based on information and belief,
19 DEFENDANTS failed and continue to fail to timely produce complete time, pay, and personnel
20 records when requested by other Aggrieved Employees.

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

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

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

13 72. Based on information and belief, DEFENDANTS shifted the costs of doing business
14 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
15 to the use of Aggrieved Employees' personal mobile phone and data usage for work related purposes
16 including but not limited to receiving and responding to work related messages and/or phone calls.
17 Based on information and belief, Aggrieved Employees were not reimbursed for the cost of using
18 their personal phone for work related purposes. For example, PLAINTIFF was required to use his
19 personal phone to respond to work related phone calls and/or text messages from co-workers,
20 supervisors and/or managers. Moreover, at times, PLAINTIFF received work-related security codes
21 from DEFENDANTS' software to his personal cell phone.

22 73. Additionally, at times, PLAINTIFF was required to work remotely from home and
23 was not reimbursed for the cost of using home internet services, computer, and/or personal phone
24 for work related purposes.

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

1 assigned by DEFENDANTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 90. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

2 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

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

1 properly obtain authorization or consent to such a background check, and thus was an unlawful
2 background check.

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

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

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

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

16 Unlawful Inquires into Criminal History

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

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

26 101. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
27 engaged in these same herein described unlawful practices, which led to violations of the California
28 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described

1 unlawful practices to all of its employees that it applied to PLAINTIFF.

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

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

6 102. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

7 **Failure to Keep Accurate Records**

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

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

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

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

24 106. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
25 Orders, section 7 require that employers keep the following information on file for each employee

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

1 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
2 and the corresponding number of hours worked by the employee at each hourly rate, when the
3 employee begins and ends each work period (including meal periods) and split intervals; total hours
4 worked by the employee; all deductions; gross wages earned; and net wages earned.

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

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

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

27 **Meal Period Violations**

28 110. California law requires employers to provide employees a duty-free, uninterrupted

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

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

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

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

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

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

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

7 117. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
8 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
9 practices, other unlawful policies and practices including but not limited to its misclassification
10 scheme resulted in the denial of compliant meal periods in violation of California's meal period
11 laws.

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

17 119. These unlawful meal period policies and practices result in violations of Labor Code
18 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
19 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
20 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
21 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

22 **Rest Period Violations**

23 120. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
24 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
25 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
26 "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
27 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
28 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to

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

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

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

25 123. Based on information and belief, DEFENDANTS implemented policies and/or
26 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
27 employer control during rest periods. Based on further information and belief, Aggrieved
28 Employees were pressured to complete their work duties according to a designated schedule such

1 that rest periods were only taken once tasks were completed, and/or as time permitted. Based on
2 information and belief, some Aggrieved Employees were denied rest periods as a result of
3 DEFENDANTS' unlawful misclassification scheme.

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

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

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

15 **Minimum and Overtime Wage Violations**

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

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

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

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

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

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

21 133. Based on information and belief, DEFENDANTS further violated California's
22 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
23 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
24 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
25 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
26 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
27 other Aggrieved Employees.

28 134. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,

1 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
2 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
3 Wage Orders, section 20.

4 **Statutory Wage Violations**

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

16 **Refusal to Make Payment**

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

25 **Standard Conditions of Labor Violations**

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).

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

8 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

19 **Wage Statement Violations**

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

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

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

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

27 151. Based on information and belief, wage statements issued by DEFENDANTS failed
28 to list all applicable hourly rates in effect during the pay period and the corresponding number of

1 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
2 Code section 226(a)(9).

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

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

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

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

16 156. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
17 Aggrieved Employees with accurate, itemized wage statements.

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

27 158. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
28 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period

1 during which the statute provisions were violated.³

2 **Seating Violations**

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

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

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

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

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

17 162. Based on information and belief, DEFENDANTS failed to provide Aggrieved
18 Employees that worked at DEFENDANTS' retail locations with suitable seating, and when such
19 employees were not engaged in duties which required them to stand, no seating was placed in
20 reasonable proximity to their workstations.

21 163. Moreover, based on information and belief, the nature of the work reasonably
22 permitted the use of seats for at least part of the time that Aggrieved Employees were working at
23 DEFENDANTS' retail locations. Lastly, there were periods of time when Aggrieved Employees
24 were not engaged in active duties of their employment, yet there were no suitable seats in reasonable
25 proximity to the work area and use of seats would not interfere with the performance of their duties.

26 164. The Aggrieved Employees worked in various positions. The nature of Aggrieved
27 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide

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

1 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
2 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
3 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
4 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
5 separate civil penalty.

6 **Sick Leave Violations**

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

14 166. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
15 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
16 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
17 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
18 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

23 168. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
24 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
25 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
26 were entitled to the maximum number of hours accruable.

27 169. Upon information and belief, DEFENDANTS failed and continue to fail to comply
28 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with

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

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

5 171. On information and belief, PLAINTIFF alleges that all of these practices were
6 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

25 175. Based on information and belief, DEFENDANTS had and continue to have a
26 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
27 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
28 to Aggrieved Employees upon separation of employment, in violation of California law, including

1 but not limited to, Labor Code section 227.3.

2 **Untimely Payment of Final Wages**

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

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

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

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

25 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

26 180. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
27 require any employee or applicant for employment to agree, in writing, to any term or condition
28 which is known by such employer...to be prohibited by law.” DEFENDANTS required and

1 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
2 conditions of employment including but not limited to unlawful criminal and/or financial checks as
3 a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

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

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

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

28 185. Based on further information and belief, DEFENDANTS knew that requiring

1 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
2 condition of obtaining and/or holding employment was unlawful.

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

5 Unlawful Inquires into Criminal History

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

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

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

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

- 26 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
27 relevant California Labor Code provisions listed herein only if permitted by the
28 PAGA statute, pursuant to Labor Code section 2699(a); and

1 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
2 violations without a civil penalty recoverable under the PAGA, all in the default
3 amounts provided by Labor Code section 2699(f).

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

7 190. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
8 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: March 21, 2023

CROSNER LEGAL, PC

By: 
Zachary M. Crosner, Esq.
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CHRISTOPHER PUGA