

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: William Fahey

1 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
2 JAMIE SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
3 **CROSNER LEGAL, PC**
4 9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
5 Tel: (866) 276-7637
Fax: (310) 510-6429

6 Attorneys for Plaintiff JIHYUN KWON,
7 on behalf of the State of California,
8 and others similarly situated and aggrieved

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 v.

15 WOOLTARI USA, INC., a Delaware
16 corporation; and DOES 1-100, inclusive,

17 Defendants.
18

Case No.: **23STCV06707**

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

1 Plaintiff, JIHYUN KWON (“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 WOOLTARI USA, INC., a Delaware corporation; and DOES 1-100, inclusive,
4 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
5 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 pursuant to
14 California statutes, including but not limited to the PAGA, and decisional law and regulations.

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

21 **THE PARTIES**

22 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
23 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
24 in the State of California as a non-exempt employee from on or around September 26, 2020, through
25 on or about April 18, 2022.

26 5. PLAINTIFF worked for DEFENDANTS as a designer and/or similar title(s) in Los
27 Angeles County.

28 6. DEFENDANTS are a Delaware corporation that, at all relevant times, were

1 authorized to do business within the State of California and are doing business in the State of
2 California.

3 7. DEFENDANTS own, operate, or otherwise manage a business that distributes
4 mainly Korean food products to customers via, stores located throughout the United States and
5 online, including but not limited to, DEFENDANTS' online marketplace and/or via
6 DEFENDANTS' mobile app.

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

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

23 **JOINT LIABILITY**

24 10. Under California law, the definition of the terms "to employ" are broadly construed
25 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
26 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
27 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
28 Cal.4th 35, 64 (2010). One reason that the IWC defined "employer" in terms of exercising control

1 was to reach situations in which multiple entities control different aspects of the employment
2 relationship. Supervision of the work, in the specific sense of exercising control over how services
3 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
4 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
5 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
6 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
7 California, applying a less stringent standard to what constitutes sufficient control by a business
8 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
9 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
10 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
11 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
12 employment,” *Id.* at 875 [emphasis added].

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

20 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
21 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
22 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
23 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
24 policies and practices regardless of the location(s) where they worked. Among other things,
25 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
26 in DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control
27 over the day-to-day operations and employment matters, including the power to hire and fire, set
28 schedules, issue employee policies, and determine rates of compensation across its locations in

1 California; (3) DEFENDANTS utilize the same policies and procedures for all California
2 employees, including issuing the same employee handbooks and other form agreements; (4)
3 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
4 employment matters; and, (6) DEFENDANTS share employees.

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

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

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

1 PLAINTIFF seeks relief in this Complaint.

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

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

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

14 **PAGA ALLEGATIONS**

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

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

22 20. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
23 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
24 limitations period and suffered one or more of the Labor Code violations set forth herein.
25 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
26 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
27 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
28 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by

one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by the employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS

21. On January 3, 2023, PLAINTIFF, through counsel, gave written notice by online filing with the California Labor and Workforce Development Agency (“LWDA”) informing the LWDA and the Division of Occupational Safety and Health that DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via certified mail.

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

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

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

FACTUAL ALLEGATIONS

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

26. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.

1 PLAINTIFF worked for DEFENDANTS in Los Angeles County as a designer and/or similar title(s)
2 from on or around September 26, 2020 through on or about April 18, 2022. PLAINTIFF regularly
3 worked at least eight (8) hours per day, often working at least eleven (11) hours per day, at least five
4 (5) days per week. At times, PLAINTIFF worked every day of the workweek, working more than
5 six (6) hours in each consecutive shift.

6 27. Based on information and belief, at times, DEFENDANTS misclassified
7 PLAINTIFF as an exempt employee and compensated PLAINTIFF on a salaried basis. Based on
8 information and belief, at times, PLAINTIFF was compensated on an hourly basis but only for time
9 counted by DEFENDANTS as hours worked.

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

28 29. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate

1 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
2 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
3 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
4 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
5 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
6 below.

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

13 31. Based on information and belief, Aggrieved Employees were not paid for all hours
14 worked due in part, to DEFENDANTS' misclassification scheme. Namely, DEFENDANTS
15 had/has a policy and practice of misclassifying Aggrieved Employees as exempt, further failing to
16 pay them for all hours worked, in violation of California law, including but not limited to
17 California's minimum wage laws. For example, at times during the relevant period, DEFENDANTS
18 misclassified PLAINTIFF and some of the other Aggrieved Employees as exempt employees to try
19 to evade California wage and hour laws including but not limited to, payment of minimum and
20 overtime wages and provision of meal and rest periods even though PLAINTIFF and other
21 misclassified Aggrieved Employees did not satisfy any test for exemption under California law. For
22 example, PLAINTIFF did not regularly exercise discretion/independent judgment in her job and
23 typically spent more than fifty percent of her workday performing non-exempt duties.
24 PLAINTIFF's duties involved trade techniques rather than invention, imagination, originality, or
25 talent in a recognized field or artistic or creative endeavor. Moreover, PLAINTIFF did not earn a
26 salary equivalent to at least twice the state minimum wage for full-time work. Based on further
27 information and belief, other Aggrieved Employees were also not compensated with a monthly
28 salary that equated to twice the California minimum wage rate. See, Labor Code section 515 and

1 Cal. Code of Regs., tit. 8, § 11040 [providing that, for each exempted category, the employee must
2 earn "a monthly salary equivalent to no less than two (2) times the state minimum wage for full-
3 time employment"]. Based on information and belief, DEFENDANTS misclassified some of the
4 other Aggrieved Employees as salaried/exempt even they spent more than fifty percent of their
5 workdays performing non-exempt job duties, did not regularly exercise discretion and independent
6 judgment on the job, and/or did not otherwise satisfy any test for exemption under California law.

7 32. Based on information and belief, Aggrieved Employees were not paid for all hours
8 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
9 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
10 the clock work policies and/or practices.

11 33. For example, at times, including but not limited to, on various diverse dates, from in
12 or about November 2021 through at least February 2022, DEFENDANTS' electronic/computer
13 employee time-keeping system consistently malfunctioned (or did not work at all) such that
14 PLAINTIFF and other Aggrieved Employees were required to either reinitiate and/or otherwise
15 troubleshoot the system prior to being able to clock in and/or were unable to clock in at all for the
16 start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the
17 underpayment of wages owed to PLAINTIFF and other Aggrieved Employees. Based on
18 information and belief, Aggrieved Employees experienced the same issues when clocking out for
19 shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not
20 recorded and not compensated and resulted in unpaid minimum wages owed to Aggrieved
21 Employees.

22 34. Moreover, PLAINTIFF and other Aggrieved Employees were consistently required
23 to perform work off-the-clock on purported days off and/or during their vacations. For example,
24 PLAINTIFF was required to perform work off-the-clock that was neither recorded nor compensated,
25 including but not limited to, on various diverse Saturdays and/or Sundays, from in or about October
26 2020 and continuing through at least February 2022. Based on information and belief, Aggrieved
27 Employees were also pressured to complete at least some of their work tasks off-the-clock in order
28 to meet DEFENDANTS' goals and expectations. For example, on information and belief,

1 Aggrieved Employees were also required to complete off-the-clock work outside of scheduled shifts
2 due to work-related phone calls and/or messages they received and were required to respond to,
3 including but not limited to, communications from supervisors regarding scheduling and/or other
4 work tasks, resulting in the underpayment of wages owed to Aggrieved Employees.

5 35. Based on information and belief, PLAINTIFF and other Aggrieved Employees that
6 were paid on a salary basis and/or otherwise misclassified as exempt were also denied all owed
7 minimum wages due to DEFENDANTS' misclassification scheme.

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

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

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

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

28 40. Based on information and belief, DEFENDANTS failed and continue to fail to pay

1 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours
2 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in
3 a work week, in violation of California's overtime laws.

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

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

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

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

26 45. Based on information and belief, DEFENDANTS required Aggrieved Employees to
27 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
28 into account when scheduling meal periods for Aggrieved Employees. Based on information and

1 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

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

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

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

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

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

24 51. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
25 additional hour of wages at their respective regular rates of compensation for each workday a lawful
26 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
27 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
28 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,

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

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

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

11 54. Based on information and belief, DEFENDANTS did not have a have a compliant
12 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
13 practice.

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

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

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

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

26 59. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
27 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
28 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each

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

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

9 **61.** Based on information and belief, DEFENDANTS has and continues to have a
10 uniform policy and practice of failing to provide one day of rest for every workweek, in violation
11 of including but not limited to, Labor Code Section 551. For example, at times, DEFENDANTS
12 required PLAINTIFF to work for seven consecutive days in a workweek, performing more than six
13 (6) hours of work during each consecutive shift Based on information and belief, other Aggrieved
14 Employees were also suffered, permitted, or required to work for seven consecutive days in a
15 workweek, in violation of California law, including but not limited to Labor Code Section 551.

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

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

1 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
2 other off-the-clock work policies and practices described above) which results in a violation of
3 Labor Code section 226(a).

4 64. Based on information and belief, wage statements issued by DEFENDANTS failed
5 to list all applicable hourly rates in effect during the pay period and the corresponding number of
6 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
7 Code section 226(a)(9). For example, as described herein, based on information and belief,
8 DEFENDANTS also failed to incorporate all forms of non-discretionary compensation earned
9 during the pay period into the overtime pay rate calculation, and as such, failed to display the proper
10 overtime rate(s) for each hour of overtime.

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

15 66. Based on information and belief, wage statements issued by DEFENDANTS failed
16 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid.

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

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

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

26 70. **Failure to Produce Employment Records.** Based on information and belief,
27 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
28 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code

1 sections 226, 1198.5, 432, and/or the applicable Wage Order For example, PLAINTIFF sent a
2 written request for time, payroll and personnel records to DEFENDANTS. Yet, DEFENDANTS
3 failed to timely produce complete records within the time periods delineated by California labor
4 law. Based on information and belief, DEFENDANTS failed and continue to fail to timely produce
5 complete time, pay, and personnel records when requested by other Aggrieved Employees.

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

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

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

26 74. Based on information and belief, DEFENDANTS shifted the costs of doing business
27 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
28 but not limited to, uniforms/clothing/safety/protective equipment, personal tools, personal vehicles

1 and/or the use of Aggrieved Employees' personal mobile phone/computers and data usage for work
2 related purposes, including but not limited to, receiving and responding to work related messages
3 and/or phone calls. For example, based on information and belief, at times, PLAINTIFF and other
4 Aggrieved Employees received calls/messages to their personal cell phones/mobile devices from
5 supervisors and/or other Aggrieved Employees regarding scheduling and/or other work tasks but
6 were not provided any reimbursement from DEFENDANTS for this personal cell phone use. On
7 further information and belief, DEFENDANTS have a policy in practice of failing to reimburse
8 PLAINTIFF and other Aggrieved Employees for all expenses that were incurred as a result of being
9 required to work remotely and/or from their homes. For example, as explained above, PLAINTIFF
10 was regularly required to perform off-the-clock work outside of her scheduled shifts, including but
11 not limited to, during purported days off and/or on her vacation days. Oftentimes, if not always,
12 this off-the-clock work PLAINTIFF performed on purported days off and/or outside of her
13 scheduled shifts was performed at PLAINTIFF' home. As a result of working from home,
14 PLAINTIFF and other Aggrieved Employees were necessarily required to use their home internet,
15 electricity, and other utilities in the discharge of their duties, yet, did not receive any and/or full
16 reimbursement from DEFENDANTS' for these business expenses.

17 75. Based on information and belief, DEFENDANTS regularly failed to reimburse and
18 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
19 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
20 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
21 assigned by DEFENDANTS.

22 76. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
23 for all reasonable expenses associated with carrying out their duties required that Aggrieved
24 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
25 2802.

26 77. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
27 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
28 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the

1 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
2 accrued sick leave hours on the correct number of hours worked (as a result of the
3 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
4 times/other required off-the-clock work including but not limited to unpaid meal periods) and by
5 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
6 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
7 compensation into the sick leave pay rate calculation.

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

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

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

26 81. As such, DEFENDANTS have violated California's paid sick leave laws and
27 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
28 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These

1 unlawful practices and policies violate Labor Code sections 245-248.5.

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

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

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

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

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

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

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

27 87. Aggrieved Employees worked in various positions, including but not limited to, as
28 designers, shipping and receiving clerks, warehouse workers, among other diverse relevant positions

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

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

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

16 **90.** Upon separation of employment, Aggrieved Employees' final paychecks were not
17 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
18 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
19 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
20 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
21 accrued rates. For example, on April 18, 2022, DEFENDANTS terminated PLAINTIFF's
22 employment but failed to provide PLAINTIFF with a final paycheck containing all owed wages,
23 including, but not limited to, compensation for her last day worked, unused paid vacation, all owed
24 minimum wages, overtime wages, premium wages, and all owed sick leave and/or other paid time
25 off wages at the properly accrued rates.

26 **91. Unlawful Agreements-Unlawful Criminal History Inquiries.**

27 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

28 **92.** Based on information and belief, DEFENDANTS required Aggrieved Employees to

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

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

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

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

28 96. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or

1 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
2 section 432.5.

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

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

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

13 Unlawful Inquires into Criminal History

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

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

23 102. **Failure to Provide a Safe and Healthful Workplace.** During the PAGA Period,
24 DEFENDANTS have had a policy and practice of failing, within one business day after
25 DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to
26 COVID-19, to notify PLAINTIFF and other Aggrieved Employees who were on the premises at the
27 same worksite as the qualifying individual within the infectious period, and the employers of
28 subcontracted employees who were on the premises at the same worksite as the qualifying individual

1 within the infectious period and the exclusive representative, if any, of the cleaning and disinfection
2 plan that the employer is implementing per the guidelines of the COVID 10 prevention program per
3 the Cal-OSHA COVID-19 Emergency Temporary Standards, among other things in violation of
4 Labor Code sections 6409.6 and/or 6432.

5 103. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
6 engaged in these same herein described unlawful practices, which led to violations of the California
7 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
8 unlawful practices to all of its employees that it applied to PLAINTIFF.

9 **FIRST CAUSE OF ACTION**
10 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
11 **2698, *ET SEQ.***
12 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
13 **Defendants)**

14 104. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

15 **Failure to Keep Accurate Records**

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

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

25 107. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
26 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
27 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
28 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay

1 period during which the referenced statutes and Wage Order provisions were violated.¹

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

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

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

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

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

1 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
2 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

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

7 **Meal Period Violations**

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

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

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

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

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

3 116. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
4 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
5 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
6 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
7 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
8 periods completely.

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

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

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

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

24 121. These unlawful meal period policies and practices result in violations of Labor Code
25 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
26 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
27 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
28 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

1 **Rest Period Violations**

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

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

26 124. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
27 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
28 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject

1 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
2 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
3 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

20 **Violation of California Day of Rest Law**

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

25 130. Based on information and belief, DEFENDANTS has and continues to have a
26 uniform policy and practice of failing to provide one day of rest for every workweek, in violation
27 of including but not limited to, Labor Code Section 551. For example, at times, DEFENDANTS
28 required PLAINTIFF to work for seven consecutive days in a workweek, performing more than six

1 (6) hours of work during each consecutive shift Based on information and belief, other Aggrieved
2 Employees were also suffered, permitted, or required to work for seven consecutive days in a
3 workweek, in violation of California law, including but not limited to Labor Code Section 551.

4 **Minimum and Overtime Wage Violations**

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

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

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

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

27 135. Based on information and belief, PLAINTIFF and other Aggrieved Employees that
28 were paid on a salary basis and/or otherwise misclassified as exempt were denied all owed minimum

1 and overtime wages for all hours worked due to DEFENDANTS' misclassification scheme.

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

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

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

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

23 **Statutory Wage Violations**

24 140. California Labor Code section 223 makes it unlawful for an employer to secretly pay
25 wages lower than required by statute while purporting to pay legal wages. As described above,
26 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
27 earned minimum and overtime compensation for all hours worked which resulted in the payment of
28 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of

1 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
2 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
3 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
4 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
5 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
6 Labor Code § 2699(f)-(g).

7 **Refusal to Make Payment**

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

16 **Standard Conditions of Labor Violations**

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

24 **Business Expense Violations**

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

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

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

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

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

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

27 149. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
28 full reimbursement for all reasonable expenses associated with carrying out their duties required

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

3 150. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
4 Employees have suffered injury in that they were not completely reimbursed as mandated by
5 California law.

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

10 **Wage Statement Violations**

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

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

28 154. Moreover, due to violations detailed above, including but not limited to,

1 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
2 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
3 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
4 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
5 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
6 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
7 compensation earned during the pay period into the regular rate of pay for purposes of calculating
8 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
9 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

25 158. Based on information and belief, wage statements issued by DEFENDANTS failed
26 to list the inclusive dates of the pay period for which the Class Member is being paid.

27 159. DEFENDANTS' failure to accurately list all hours worked on all wage statements
28 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved

1 Employees over whether they received all wages owed to them.

2 160. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
3 they could not easily determine whether they received all wages owed to them and whether they
4 were paid for all hours worked.

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

8 162. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
9 Aggrieved Employees with accurate, itemized wage statements.

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

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

22 **Seating Violations**

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

26 166. All applicable IWC Wage Orders, Section 14(A-B) provides:
27

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

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

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

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

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

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

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

27 **Sick Leave Violations**

28 171. DEFENDANTS violated California's paid sick leave laws including, Labor Code

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

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

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

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

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

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

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

28 178. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the

1 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
2 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

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

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

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

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

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

23 **Untimely Payment of Final Wages**

24 182. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
25 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
26 payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an
27 employee not having a written contract for a definite period quits his or her employment, his or her
28 wages shall become due and payable not later than 72 hours thereafter, unless the employee has

1 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
2 to his or her wages at the time of quitting.”

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

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

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

18 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

25 187. The California Labor Code places certain procedural and substantive limits on an
26 employers’ ability to conduct employee background checks and on how employers can use the
27 information they obtain through those background checks. Labor Code section 1024.5 states that
28 employers, except for financial institutions, may order a credit check only if the individual works

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

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

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

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

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

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

26 Unlawful Inquires into Criminal History

27 193. Labor Code section 432.7 prohibits an employer from asking applicants about past
28 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on

1 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
2 convictions on its employment application, in violation of California law.

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

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

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

14 196. Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the
15 California Occupational Safety and Health Act (“Cal OSHA”), employers must maintain a safe and
16 healthful place of employment. Specifically, Labor Code section 6400, requires the following:

17 197. (a) Every employer shall furnish employment and a place of employment that is safe
18 and healthful for the employees therein...

19 198. Labor Code section 6401 provides as follows:

20 199. Every employer shall furnish and use safety devices and safeguards, and shall adopt
21 and use practices, means, methods, operations, and processes which are reasonably adequate to
22 render such employment and place of employment safe and healthful. Every employer shall do every
23 other thing reasonably necessary to protect the life, safety, and health of employees.

24 200. Labor Code section 6402 prohibits the following:

25 201. No employer shall require, or permit any employee to go or be in any employment
26 or place of employment which is not safe and healthful.

27 202. Similarly, Labor Code section 6404 provides as follows:

28 203. No employer shall occupy or maintain any place of employment that is not safe and

1 healthful.

2 204. In addition to the above, Labor Code section 6403 requires that employees provide
3 safety devices to its employees. Labor Code section 6403 states:

4 205. No employer shall fail or neglect to do any of the following:

5 206. (a) To provide and use safety devices and safeguards reasonably adequate to render
6 the employment and place of employment safe.

7 207. (b) To adopt and use methods and processes reasonably adequate to render the
8 employment and place of employment safe.

9 208. (c) To do every other thing reasonably necessary to protect the life, safety, and health
10 of employees.

11 209. Similarly, Labor Code section 6406(d) states the following:

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

14 211. Finally, Labor Code section 6407 provides:

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

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

21 214. At all relevant times, DEFENDANTS employed PLAINTIFF and Aggrieved
22 Employees subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times,
23 DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and
24 safeguards and of failing to adopt and use practices, means, methods, operations, and/or processes
25 which are reasonably adequate to render such employment and place of employment safe and
26 healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times
27 DEFENDANTS had and have a policy and practice of requiring or permitting employees to go or
28 be in in any employment or place of employment which is not safe and healthful, pursuant to Labor

1 Code section 6402. At all relevant times, DEFENDANTS had and have a policy and practice of
2 failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render
3 the employment and place of employment safe; adopt and use methods and processes reasonably
4 adequate to render the employment and place of employment safe; and do every other thing
5 reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code
6 section 6403.

7 215. PLAINTIFF is informed and believes and thereon alleges that these failures include,
8 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or
9 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to
10 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
11 conditions between PLAINTIFF and/or other Aggrieved Employees.

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

20 217. At all relevant times, DEFENDANTS had and have a policy and practice of failing
21 within one business day after DEFENDANTS or a representative of DEFENDANTS received notice
22 of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other Aggrieved
23 Employees and/or their exclusive representatives, who were on the premises at the same worksite
24 as a qualifying individual who was within the infectious period that they may have been exposed to
25 COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and
26 practice of failing within one business day after DEFENDANTS or a representative of EMLOYER
27 received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other Aggrieved
28 Employees who were on the premises at the same worksite as the qualifying individual within the

1 infectious period and the exclusive representative, if any, with information regarding COVID-19-
2 related benefits to which the employee may be entitled under applicable federal, state or local laws,
3 including but not limited to, workers' compensation, and options for exposed employees, including
4 COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or
5 negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the
6 employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and
7 6432.

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

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

26 220. PLAINTIFF is informed and believes , and based thereon alleges that
27 DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and
28 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule

1 for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
2 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
3 blowers; and a sufficient number of toilets to be used.

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

11 222. Based on information and belief, DEFENDANTS failed to protect Aggrieved
12 Employees from exposure to COVID-19 due to, including but not limited to, failing to
13 maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address
14 hazards related to the COVID-19 virus.

15 223. As such, DEFENDANTS failed to comply with the occupational safety and health
16 standards, failed to do everything reasonably necessary to protect the health and safety of
17 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
18 necessary to maintain a safe and healthful workplace.

19 224. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
20 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
21 is subject to civil penalties.

22 225. Under the provisions of PAGA and the above mentioned Labor Code sections,
23 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
24 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1194, 1197,
25 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5, 6400-6404, 6406-6407, 6409.6, 6432, and all
26 applicable Wage Orders as well as all interpretations of these laws by California Courts and
27 administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS
28 are liable for the following penalties:

- 1 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
2 relevant California Labor Code provisions listed herein only if permitted by the
3 PAGA statute, pursuant to Labor Code section 2699(a); and
4 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
5 violations without a civil penalty recoverable under the PAGA, all in the default
6 amounts provided by Labor Code section 2699(f).
7 c. The proper measure of penalties under PAGA is the number of violations,
8 whether those violations were committed as against PLAINTIFF or any
9 Aggrieved Employee, whether a party to this action or not.

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

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

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 24, 2023

CROSNER LEGAL, PC

By: 
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiff
JIHYUN KWON