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10 Attorneys for Plaintiff BENNY MURRAY II  
11 on behalf of the State of California,  
12 and others similarly situated and aggrieved

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

11 BENNY MURRAY II, on behalf of the State  
12 of California, and others similarly situated  
13 and aggrieved,

14 Plaintiff,

15 v.

16 ALCLEAR, LLC a Delaware Limited  
17 Liability Company; and DOES 1-100,  
18 inclusive,

19 Defendants.

Electronically FILED by  
Superior Court of California,  
County of Los Angeles  
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Executive Officer/Clerk of Court,  
By Y. Tarasyuk, Deputy Clerk

Case No.: **23STCV10429**

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

1 Plaintiff, BENNY MURRAY II, (“PLAINTIFF”), an individual on behalf of PLAINTIFF,  
2 the State of California, and all other Aggrieved Employees (as defined below), hereby files this  
3 Complaint against Defendants ALCLEAR, LLC a Delaware Limited Liability Company; and DOES  
4 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed  
5 and believes and thereon alleges as follows:

#### 6 **INTRODUCTION**

7 1. This is a representative action filed by PLAINTIFF on behalf of PLAINTIFF, all  
8 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California’s  
9 Private Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties  
10 (75% 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 is employed by DEFENDANTS in  
24 the State of California as a non-exempt employee.

25 5. PLAINTIFF worked for DEFENDANTS in Los Angeles County as a non-exempt  
26 lead, team lead, ambassador, senior ambassador and/or similar title(s) from in or around late  
27 September 2021 through the present.

28 6. DEFENDANTS are a Delaware limited liability company that, at all relevant times,

1 were 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 technology company that owns  
4 and operates CLEAR, a biometric secure identity platform that stores individuals' personal  
5 information and links it to biometric data, allowing them to bypass security checkpoints by using  
6 fingerprint and/or iris identification. Per DEFENDANTS' website, DEFENDANTS offer "CLEAR  
7 Lanes" to its CLEAR customers/membership holders to [g]et where you're going faster through one  
8 of our hundreds of [CLEAR] Lanes nationwide." DEFENDANTS tout itself as providing "Stress-  
9 Free Airport Security Nationwide" and claims its CLEAR airport membership and/or "CLEAR  
10 Plus" membership helps its customers "get through security faster." DEFENDANTS operate their  
11 business primarily out of airports, stadiums, among other venues nationwide, with multiple locations  
12 throughout California, including but not limited to, locations, offices and/or facilities located in  
13 Long Beach, Palm Springs, Ontario, San Diego, San Jose, Oakland, Sacramento, at least three (3)  
14 locations, offices and/or facilities located in San Francisco, and at least three (3) locations, offices  
15 and/or facilities located in Los Angeles, including but not limited to, those operating out of BMO  
16 Stadium, SoFi Stadium and out of Los Angeles International Airport (LAX), where DEFENDANTS  
17 assigned PLAINTIFF during the relevant period.

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

24         9.         PLAINTIFF is further informed and believes that, at all relevant times, each  
25 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,  
26 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or  
27 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of  
28 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all

1 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this  
2 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant  
3 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant  
4 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,  
5 controlled, aided and abetted the conduct of all other Defendants.

#### 6 **JOINT LIABILITY**

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

24 11. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and other  
25 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of  
26 the Wage Orders, under the alternative definitions of “to employ” adopted by the California  
27 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control  
28 over wages, hours and working conditions of PLAINTIFF and Aggrieved Employees; (2) suffered

1 or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF  
2 and Aggrieved Employees to work for them.

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

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

22 14. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a  
23 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,  
24 time-keeping practices, meal and rest periods, reimbursement of business expenses and other  
25 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved  
26 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of  
27 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively  
28 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of

1 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's  
2 and other Aggrieved Employees' employment with or without cause. Upon information and belief,  
3 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in  
4 writing the details of their compensation, and the manner in which they were to take meal and rest  
5 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked  
6 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS  
7 collectively would evaluate their wage rates.

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

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

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

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

### 25 **PAGA ALLEGATIONS**

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

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

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

#### 16 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

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

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

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

#### 28 **FACTUAL ALLEGATIONS**

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

5           25.     PLAINTIFF is employed by DEFENDANTS as a non-exempt employee.  
6 PLAINTIFF worked for DEFENDANTS at LAX as a non-exempt lead, team lead, ambassador,  
7 senior ambassador and/or similar title(s) from in or around late September 2021 through the present.  
8 PLAINTIFF regularly worked at least eight (8) hours per day, at least five (5) days per week.

9           26.     At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an  
10 hourly basis for time counted by DEFENDANTS as hours worked. PLAINTIFF was also  
11 compensated with commissions, bonuses and/or other non-discretionary compensation. For  
12 example, PLAINTIFF was compensated with commissions and/or non-discretionary bonuses for  
13 completing CLEAR membership enrollments and/or sales.

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

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

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

1           30.     Based on information and belief, Aggrieved Employees were not paid for all hours  
2 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours  
3 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-  
4 the clock work policies and/or practices. For example, based on information and belief,  
5 DEFENDANTS failed to compensate Aggrieved Employees for time spent performing pre-shift  
6 and/or post-shift off-the-clock work such as, but not limited to, time spent undergoing required pre-  
7 clock-in employer-mandated security screenings and/or temperature screenings and/or time spent  
8 bestowing personal items in employee lockers/storage area. This pre-shift off-the-clock work was  
9 neither recorded nor compensated, resulting in the consistent underpayment of wages owed to  
10 Aggrieved Employees.

11           31.     Moreover, based on information and belief, at times, DEFENDANTS' electronic  
12 employee time-keeping system / app malfunctioned such that PLAINTIFF and other Aggrieved  
13 Employees were required to either reinitiate and/or otherwise troubleshoot the system / app prior to  
14 being able to clock in and/or were unable to clock in at all for the start of their shifts, resulting in  
15 off-the-clock work and the underpayment of wages owed to Aggrieved Employees. Based on  
16 information and belief, Aggrieved Employees experienced the same issues when clocking out for  
17 shifts. This time spent under DEFENDANTS' control was not recorded and not compensated and  
18 resulted in unpaid minimum wages owed to Aggrieved Employees.

19           32.     PLAINTIFF and other Aggrieved Employees were required to complete other off-  
20 the-clock work tasks before clocking in for the beginning of their shifts and/or after clocking out for  
21 the end of their shifts and/or during uncompensated meal periods, resulting in the underpayment of  
22 minimum and overtime wages owed to PLAINTIFF and other Aggrieved Employees. For example,  
23 based on information and belief, Aggrieved Employees were also required to complete off-the-clock  
24 work outside of scheduled shifts and/or during unpaid meal periods due to work-related phone calls  
25 and/or messages they received to their phones/mobile devices and were required to respond to,  
26 including but not limited to, communications from supervisors and/or other Aggrieved Employees  
27 regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to  
28 Aggrieved Employees.

1           33.     Based on information and belief, at times, DEFENDANTS instituted a commission-  
2 based compensation scheme that resulted in pay periods during which Aggrieved Employees were  
3 denied the minimum wage for all hours worked. For example, on information and belief, at times,  
4 DEFENDANTS paid Aggrieved Employees on a strictly commission basis (e.g., per CLEAR  
5 membership enrollment and/or sale), at least during some pay periods, during the relevant time  
6 period. However, based on information and belief, DEFENDANTS failed to separately compensate  
7 Aggrieved Employees for all non-commission rate related activities/all non-productive time,  
8 including but not limited to, all rest breaks and/or time spent preparing/setting up for sales, time  
9 spent completing paperwork, waiting time between sales and tasks and/or other waiting time, and/or  
10 time spent performing other work duties that otherwise fall outside of the commission-based  
11 compensation criteria. DEFENDANTS' failure to separately compensate Aggrieved Employees for  
12 their rest periods and/or other non-productive time and/or failure to compensate them at the correct  
13 rates for all non-productive time and/or rest periods resulted in the failure to pay Aggrieved  
14 Employees for all hours worked and violations of California wage and hour laws, including but not  
15 limited to, Labor Code sections 226.2 and/or 1197. Based on information and belief,  
16 DEFENDANTS further failed to include this information on these employees' wage statements  
17 required by Labor Code section 226.2. Based on further information and belief, DEFENDANTS  
18 implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other  
19 Aggrieved Employees of compensable time because the time-rounding system implemented by  
20 DEFENDANTS would almost always, if not always, result in understating actual compensable work  
21 time. Moreover, by charging PLAINTIFF and other Aggrieved Employees with fees for parking  
22 their vehicles at work DEFENDANTS deprived PLAINTIFF and other Aggrieved Employees of all  
23 owed minimum wages for all hours worked. For example, based on information and belief, at times  
24 DEFENDANTS deducted fees and/or costs from Aggrieved Employees' paychecks, thereby  
25 depriving them of all owed wages. For example, DEFENDANTS required PLAINTIFF and other  
26 Aggrieved Employees to park in the South parking lot at LAX. Aggrieved Employees were/are then  
27 charged \$10.00 for the use of this parking lot.

28           34.     Based on information and belief, DEFENDANTS failed to pay Aggrieved  
10  
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS  
GENERAL ACT

1 Employees for time they were required to spend completing orientation, policy questionnaires,  
2 and/or time spent completing the onboarding process including but not limited to reviewing various  
3 documents and policies provided by DEFENDANTS. Based on information and belief, this work time  
4 was completed off-the-clock and was not compensated.

5         35. Based in information and belief, DEFENDANTS implemented a time-rounding  
6 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of  
7 compensable time because the time-rounding system implemented by DEFENDANTS would  
8 almost always, if not always, result in understating actual compensable work time. For example,  
9 wage statements issued by DEFENDANTS evidence rounding to at least the nearest quarter, half  
10 and/or whole hour. For instance, DEFENDANTS' issued wage statement for PLAINTIFF for pay  
11 period beginning on 10/17/22 and ending 10/23/22 shows exactly 40.000 regular hours worked;  
12 DEFENDANTS' issued wage statement for PLAINTIFF for pay period beginning on 10/24/22 and  
13 ending 10/30/22 also shows exactly 40.000 regular hours worked. Similarly, DEFENDANTS'  
14 issued wage statement for pay period beginning on 10/31/22 and ending on 11/6/22 shows exactly  
15 40.000 regular hours worked and DEFENDANTS' issued wage statement for pay period beginning  
16 on 11/7/22 and ending on 11/13/22 also shows exactly 40.000 regular hours worked. Based on  
17 information and belief, DEFENDANTS rounded to at least the nearest quarter, half and/or whole  
18 hour, PLAINTIFF and other Aggrieved Employees' total hours worked during most if not all pay  
19 periods, resulting in the consistent underpayment of wages owed to PLAINTIFF and other  
20 Aggrieved Employees

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

27         37. Based on information and belief, DEFENDANTS had actual and/or constructive  
28 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to

1 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the  
2 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation  
3 of California's minimum and overtime wage laws.

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

8         39.     Based on information and belief, DEFENDANTS failed to incorporate all non-  
9 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive  
10 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used  
11 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime  
12 wages owed to PLAINTIFF and other Aggrieved Employees. For example, PLAINTIFF was often  
13 compensated with commissions and/or bonuses (e.g., for completing CLEAR Membership  
14 enrollments and/or sales) during periods in which she worked overtime, however, DEFENDANTS  
15 failed to incorporate all commissions, bonuses and/or other non-discretionary pay into the regular  
16 rate for purposes of calculating the owed overtime rate, resulting in the miscalculation and  
17 underpayment of overtime wages owed to PLAINTIFF.

18         40.     **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently  
19 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.  
20 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty  
21 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees  
22 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often  
23 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their  
24 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary  
25 from supervisors pressuring them to take non-compliant meal periods or skip meal periods  
26 completely. For example, based on information and belief, at times, PLAINTIFF's and other  
27 Aggrieved Employees' meal periods were cut short, interrupted and/or worked through completely  
28 due to the need to attend to customers/travelers, finish setting up memberships, complete

1 membership enrollments/sales, monitor security lines, provide coverage at the various airline gates,  
2 respond to work-related communications and/or complete other work tasks. Other times,  
3 PLAINTIFF was forced to take his meal period late (i.e., after working more than five hours) at least  
4 several times per week due to understaffing and/or lack of coverage, often having to work at least  
5 seven (7) hours before he could take any version of a meal period. PLAINTIFF was not paid meal  
6 period premiums for these missed, interrupted, late and/or otherwise legally noncompliant meal  
7 periods. Based on information and belief, other Aggrieved Employees were also regularly required  
8 to work through their meal periods, had their meal periods cut short and/or interrupted and/or were  
9 forced to take their meal periods late due to the need to attend to customers/travelers, finish setting  
10 up memberships, complete membership enrollments/sales, monitor security lines, provide coverage  
11 at the various airline gates, respond to work-related communications and/or complete other work  
12 tasks.

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

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

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

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

1 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved  
2 Employees did not receive lawful meal periods.

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

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

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

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

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

26 50. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide  
27 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every  
28 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the

1 middle of the work period, as required by law.

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

6 52. Based on information and belief, DEFENDANTS did not have a have a compliant  
7 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in  
8 practice. For example, PLAINTIFF typically did not receive any rest periods during his shifts due  
9 to understaffing and/or lack of coverage and the need to attend to customers/travelers, finish setting  
10 up memberships, complete membership enrollments/sales, monitor security lines, provide coverage  
11 at the various airline gates, respond to work-related communications and/or complete other work  
12 tasks.

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

17 54. Moreover, based on information and belief, DEFENDANTS failed to provide any  
18 form of a third rest period on shifts lasting longer than ten hours.

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

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

25 57. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in  
26 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in  
27 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each  
28 workday a proper rest period was not provided and/or failed to pay the proper rest period premium

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

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

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

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

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

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

1 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid.

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

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

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

11       66.     **Unlawful Deductions:** Labor Code section 221 prohibits an employer from  
12 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer  
13 to said employee." Based on information and belief DEFENDANTS made unlawful deductions  
14 from Aggrieved Employees paychecks during the relevant period. Such a practice is in violation of  
15 including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil  
16 penalties under Labor Code Section 2699.

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

28       68.     **Inaccurate Records.** Based on the above-described unlawful policies and practices,

1 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as  
2 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.  
3 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as  
4 required by law, including but not limited to the following records: total daily hours worked,  
5 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees  
6 began and ended each work period, time records of meal periods, and accurate itemized wage  
7 statements.

8         69. DEFENDANTS have failed and continue to fail to keep accurate and complete  
9 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal  
10 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and  
11 employer control during unpaid meal periods, failure to record the true start and end times of meal  
12 periods, shift start times and shift end times, and other off-the-clock work policies and practices  
13 described herein.

14         70. **Failure to Provide Written Commission Agreements.** Labor Code section 2751  
15 requires that all commission contracts "be in writing and . . . set forth the method by which the  
16 commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute,  
17 employers must also "give a signed copy of the contract to every employee who is a party [to the  
18 contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section 2751(b).

19         71. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,  
20 Aggrieved Employees who were compensated on a commission basis with proper written  
21 commission agreements, in violation of Labor Code section 2751.

22         72. **Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an  
23 employer to pay employees compensated on a piece-rate basis separately for rest and recovery  
24 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an  
25 employer to include on the wage statements for these employees the total hours of compensable rest  
26 and recovery period, the total hours for other non-productive time, the rates of compensation for  
27 these hours, and the gross wages paid for these hours. In addition, the statute requires that employees  
28 shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the

1 higher of: (i) an average hourly rate determined by dividing the total compensation for the  
2 workweek, exclusive of compensation for rest and recovery periods and any premium compensation  
3 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,  
4 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to  
5 employees compensated on a commission basis.

6 73. During the relevant period, DEFENDANTS failed to comply with Labor Code  
7 section 226.2. Specifically, based on information and belief, DEFENDANTS failed to compensate  
8 Aggrieved Employees who were paid on a strictly commission basis (e.g., CLEAR membership  
9 sold/enrollment completed separately for the rest periods and/or other nonproductive time, and/or  
10 failed to pay them for this time at the correct rates. Based on information and belief,  
11 DEFENDANTS further failed to include the information on these employees' wage statements  
12 required by this statute.

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

19 75. Based on information and belief, DEFENDANTS shifted the costs of doing business  
20 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on  
21 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses  
22 including but not limited to uniforms/work clothing/shoes and/or protective/safety gear, the use of  
23 Aggrieved Employees personal vehicles, and the use of their personal mobile phone and data usage  
24 for work related purposes to receive and respond to work related messages and/or phone calls. For  
25 example, based on information and belief, Aggrieved Employees received messages and/or phone  
26 calls to their personal phones from supervisors and/or other employees regarding scheduling and/or  
27 other work tasks but were not reimbursed/reimbursed in full by DEFENDANTS for the business  
28 use of their personal cell phones/mobile devices.

1           76.     Moreover, PLAINTIFF and other Aggrieved Employees were required to pay for  
2 parking at work without receiving any and/or full reimbursement for the expenses they incurred in  
3 connection therewith. For example, DEFENDANTS required PLAINTIFF and other Aggrieved  
4 Employees to park in the South parking lot when working their shifts at LAX. Aggrieved Employees  
5 were then charged \$10.00 for the use of this parking lot.

6           77.     DEFENDANTS did not provide reimbursement/full reimbursement to Aggrieved  
7 Employees for these business expenses. Based on further information and belief, DEFENDANTS  
8 required Aggrieved Employees to use their personal vehicles for work, including but not limited to,  
9 for driving between and/or around DEFENDANTS' various locations/facilities without reimbursing  
10 them for the personal vehicle and/or other travel expenses they incurred in connection therewith,  
11 including but not limited to, gas, vehicle wear and tear, and mileage. As such, DEFENDANTS  
12 failed to compensate Aggrieved Employees at the Internal Revenue Service (IRS) mandated per  
13 mile compensation rate for the relevant period.

14           78.     Based on further information and belief, DEFENDANTS failed to provide  
15 reimbursement / full reimbursement for expenses Aggrieved Employees incurred as a result of  
16 working for DEFENDANTS remotely and/or from their homes, including but not limited to, cost of  
17 internet service, home electricity, cost of additional memory and/or virus software for home  
18 computer / home computer use, among other business expenses associated with remote work as  
19 required by DEFENDANTS. For example, based on information and belief, at times,  
20 DEFENDANTS required Aggrieved Employees to review policy documents and/or training  
21 documents and/or perform other remote work on their computers/devices but did not provide any  
22 and/or full reimbursement to Aggrieved Employees for costs associated with being required to use  
23 their personal computers/devices and electricity for DEFENDANTS' business purposes.

24           79.     Based on information and belief, DEFENDANTS required Aggrieved Employees to  
25 pay for the purchase and/or maintenance of uniforms/work clothing and/or work shoes without  
26 providing any and/or full reimbursement for these business expenses. For example, based on  
27 information and belief, Aggrieved Employees were required to purchase shirts, pants, and/or shoes,  
28 among other work clothing/gear in a specific color, of a specific type and/or particular brand without

1 receiving any and/or full reimbursement from DEFENDANTS.

2 80. Based on information and belief, DEFENDANTS regularly failed to reimburse and  
3 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section  
4 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable  
5 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties  
6 assigned by DEFENDANTS.

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

11 **Seating Violations**

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

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

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

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

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

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

1           86.     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           87.     **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed  
7 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS  
8 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the  
9 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the  
10 accrued sick leave hours on the correct number of hours worked (as a result of the  
11 rounding/automatic deduction policies and practices for meal periods and/or shift start and end  
12 times/other required off-the-clock work including but not limited to unpaid meal periods) and by  
13 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but  
14 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary  
15 compensation into the sick leave pay rate calculation.

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

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

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

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

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

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

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

27          95.     Upon separation of employment, Aggrieved Employees' final paychecks were not  
28 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.

1 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed  
2 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,  
3 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly  
4 accrued rates.

5 96. **Violation of Labor Code section 976.** Labor Code section 976 provides that "No  
6 person shall publish or cause to be published any advertisement, solicitation or communication in  
7 any newspaper, poster, or letter, offering employment as a salesman, broker or agent whether as an  
8 employee or independent contractor, which advertisement, solicitation or communication (a) is  
9 willfully designed to mislead any person as to compensation or commissions which may be earned;  
10 or (b) falsely represents the compensation or commissions which may be earned."

11 97. Based on information and belief, DEFENDANTS have a policy and/or practice of  
12 offering prospective employees, including Aggrieved Employees a higher compensation and  
13 commission that is misleading as it falsely represents the compensation or commission that will be  
14 earned during employment, as the actual compensation or commission earned is lower than that  
15 which is offered to induce employment or continued employment. Such a practice or policy is in  
16 violation of Labor Code section 976.

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

18 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

19 99. Based on information and belief, DEFENDANTS required Aggrieved Employees to  
20 agree in writing to unlawful conditions of employment including but not limited to unlawful  
21 commissions agreements, unlawful non-solicitation and/or non-compete agreements and/or  
22 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment  
23 in violation of Labor Code section 432.5.

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

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

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

20           103. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or  
21 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code  
22 section 432.5.

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

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

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

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

5 Unlawful Inquires into Criminal History

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

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

15 Unlawful PAGA Waiver

16 109. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring  
17 Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited  
18 to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

19 110. An action pursuant to PAGA “...is a representative action on behalf of the state”  
20 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements  
21 purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and  
22 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384  
23 (“We conclude that where, as here, an employment agreement compels the waiver of representative  
24 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

25 111. Moreover, the California Supreme Court has ruled that a court cannot compel  
26 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an  
27 individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is  
28 no individual component to a PAGA action because ‘every PAGA action ... is a representative

1 action on behalf of the state.”)

2 112. Upon information and belief, DEFENDANTS required some Aggrieved Employees  
3 to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By  
4 requiring some Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver,  
5 DEFENDANTS required written agreement to an unlawful provision as a condition of employment  
6 which is a violation of labor code section 432.5.

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

11 **FIRST CAUSE OF ACTION**  
12 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**  
13 **2698, *ET SEQ.***

14 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**  
15 **Defendants)**

16 114. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

17 **Failure to Keep Accurate Records**

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

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

27 117. DEFENDANTS’ failure to keep “accurate and complete” payroll records for  
28 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all  
applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under  
Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and

1 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay  
2 period during which the referenced statutes and Wage Order provisions were violated.<sup>1</sup>

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

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

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

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

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25 <sup>1</sup> 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 from the date the employer receives a written request.” An employer’s failure to comply within this  
2 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar  
3 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

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

8 **Meal Period Violations**

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

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

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

25 125. Employers must pay employees an additional hour of wages at the employees’  
26 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted  
27 meal period, first meal period provided after five (5) hours, second meal period provided after 10  
28 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to

1 provide an employee a meal period in accordance with the applicable provision of this Order, the  
2 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation  
3 for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

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

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

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

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

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

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

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

2 **Rest Period Violations**

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

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

27 134. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely  
28 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained

1 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject  
2 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,  
3 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved  
4 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

21 **Minimum and Overtime Wage Violations**

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

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

7           141. As explained above, DEFENDANTS violated California's minimum and overtime  
8 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked  
9 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift  
10 start and end times and meal period start and end times), payment according to scheduled hours  
11 worked, commission-based compensation scheme, automatic deduction for meal periods, and/or  
12 off-the-clock/unpaid work completed during meal periods, and/or other otherwise off-the-clock  
13 work (described above), and/or other unlawful policies and/or practices described above which  
14 resulted in unpaid minimum and overtime wages.

15           142. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and  
16 Aggrieved Employees for all hours worked.

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

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

27           145. Based on information and belief, DEFENDANTS further violated California's  
28 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not

1 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary  
2 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to  
3 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of  
4 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and  
5 other Aggrieved Employees.

6 146. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,  
7 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS  
8 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC  
9 Wage Orders, section 20.

10 **Failure to Provide Written Commission Agreements**

11 147. Labor Code section 2751 requires that all commission contracts "be in writing and .  
12 . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code  
13 section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract  
14 to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract  
15 from each employee." *Id.* section 2751(b).

16 148. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,  
17 Aggrieved Employees who were compensated on a commission basis with proper written  
18 commission agreements, in violation of Labor Code section 2751.

19 **Violation of Labor Code section 976**

20 149. Labor Code section 976 provides that "No person shall publish or cause to be  
21 published any advertisement, solicitation or communication in any newspaper, poster, or letter,  
22 offering employment as a salesman, broker or agent whether as an employee or independent  
23 contractor, which advertisement, solicitation or communication (a) is willfully designed to mislead  
24 any person as to compensation or commissions which may be earned; or (b) falsely represents the  
25 compensation or commissions which may be earned."

26 150. Based on information and belief, DEFENDANTS have a policy and/or practice of  
27 offering prospective employees, including Aggrieved Employees a higher compensation and  
28 commission that is misleading as it falsely represents the compensation or commission that will be

1 earned during employment, as the actual compensation or commission earned is lower than that  
2 which is offered to induce employment or continued employment. Such a practice or policy is in  
3 violation of Labor Code section 976.

4 **Violation of Labor Code Section 226.2**

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

16 152. Based on information and belief, DEFENDANTS failed to compensate Aggrieved  
17 Employees who were paid solely on a piece rate and/or commission basis separately for the rest  
18 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based  
19 on information and belief, DEFENDANTS further failed to include this information on Aggrieved  
20 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section  
21 226.2.

22 **Statutory Wage Violations**

23 153. California Labor Code section 223 makes it unlawful for an employer to secretly pay  
24 wages lower than required by statute while purporting to pay legal wages. As described above,  
25 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all  
26 earned minimum and overtime compensation for all hours worked which resulted in the payment of  
27 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of  
28 statutory wages, including, but not limited to, minimum and overtime wages, to which they were

1 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved  
2 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and  
3 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved  
4 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to  
5 Labor Code § 2699(f)-(g).

6 **Refusal to Make Payment**

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

15 **Standard Conditions of Labor Violations**

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

24 **Business Expense Violations**

25 156. California law requires employers to indemnify their employees for all necessary  
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27 <sup>2</sup> 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.”

6 157. 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.

14 158. 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.

18 159. 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.

20 160. 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.

24 161. 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.

27 162. 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.

3 163. 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.

6 164. 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**

11 165. 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.

20 166. 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).

28 167. 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.

10 168. 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).

17 169. 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). For example, PLAINTIFF received wage statements that listed the amounts  
21 of overtime/premium wages earned but did not include a corresponding number of hours for the  
22 premium payment.

23 170. Also, wage statements issued by DEFENDANTS fail to list the inclusive dates of the  
24 pay period for which the employee is being paid. For example, DEFENDANTS' wage statement  
25 for PLAINTIFF dated 4/22/22 lists several separate overtime earnings line items, including but not  
26 limited to, multiple "OT Lookback" categories ("OT Lookback Std," "OT Lookback Fam," "OT  
27 Lookback Fire", and OT Lookback Ptr,) without listing the inclusive dates of the accurate pay period  
28 for those "OT Lookback" earnings, further failing to list the total hours worked for the pay period,

1 including but not limited to, the total hours worked for the pay period the OT Lookback earnings  
2 correspond with. As such, DEFENDANTS issued wage statements to Aggrieved Employees that  
3 were inaccurate and did not include all statutorily required information, including but not limited to,  
4 the inclusive dates of the pay period for which the employee is being paid, the total hours worked,  
5 all applicable hourly rates in effect during the pay period and the corresponding number of hours  
6 worked at each hourly rate by the employee.

7 171. As described herein, based on information and belief, DEFENDANTS also failed to  
8 incorporate all forms of non-discretionary compensation earned during the pay period into the  
9 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour  
10 of overtime worked by PLAINTIFF and other Aggrieved Employees. For example,  
11 DEFENDANTS' wage statements for PLAINTIFF provide an inaccurate overtime rate because the  
12 wage statements list an overtime rate that is one- and one-half times PLAINTIFF's base rate of pay  
13 rather than one- and one-half times PLAINTIFF regular rate of pay. As such, DEFENDANTS'  
14 issued wage statements fail to display the proper overtime rate(s) for each hour of overtime worked  
15 by Aggrieved Employees.

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

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

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

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

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

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

12 178. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.  
13 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period  
14 during which the statute provisions were violated.<sup>3</sup>

15 **Unlawful Deductions**

16 179. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from  
17 an employee any part of wages theretofore paid by said employer to said employee." Based on  
18 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees  
19 paychecks during the relevant period. Such a practice is in violation of including but not limited to,  
20 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code  
21 Section 2699.

22 180. Each violation results in a separate civil penalty, for each Aggrieved Employee, for  
23 each pay period during which the statute provisions were violated. See Lab. Code §225.5  
24 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty  
25 provided in this article, every person who unlawfully withholds wages due any employee in  
26 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure  
27 to pay each employee").

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

1           **Seating Violations**

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

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

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

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

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

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

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

24           **Sick Leave Violations**

25           186. DEFENDANTS violated California's paid sick leave laws including, Labor Code  
26 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to  
27 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to  
28 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to

1 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but  
2 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary  
3 compensation into the sick leave pay rate calculation.

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

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

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

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

22 191. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

23 192. On information and belief, PLAINTIFF alleges that all of these practices were  
24 experienced and continue to be experienced by other Aggrieved Employees.

25 193. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the  
26 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and  
27 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

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

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

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

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

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

20           **Untimely Payment of Final Wages**

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

28           198. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages

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

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

12 200. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These  
13 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or  
14 256.

15 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

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

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

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

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

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

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

#### 24 Unlawful Inquires into Criminal History

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

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

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

11                   Unlawful PAGA Waiver

12           211. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring  
13 PLAINTIFF and other Aggrieved Employees to agree in writing to other unlawful agreements,  
14 including but not limited to, an unlawful waiver of PAGA and/or representative actions as a  
15 condition of employment.

16           212. An action pursuant to PAGA “...is a representative action on behalf of the state”  
17 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements  
18 purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and  
19 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384  
20 (“We conclude that where, as here, an employment agreement compels the waiver of representative  
21 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

22           213. Moreover, the California Supreme Court has ruled that a court cannot compel  
23 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an  
24 individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is  
25 no individual component to a PAGA action because ‘every PAGA action ... is a representative  
26 action on behalf of the state.’”)

27           214. Upon information and belief, DEFENDANTS required some Aggrieved Employees  
28 to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By

1 requiring some Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver,  
2 DEFENDANTS required written agreement to an unlawful provision as a condition of employment  
3 which is a violation of labor code section 432.5.

4       215. Under the provisions of PAGA and the above mentioned Labor Code sections,  
5 including but not limited to Labor Code sections 201-203, 204, 216, 221-223, 226, 226.2, 226.7,  
6 245-248.6, 432, 432.5, 432.7, 510, 512, 558, 558.1, 976, 1024.5, 1174, 1194, 1197, 1197.1, 1198,  
7 1198.5, 1199, 2751, 2802, 2810.5 and all applicable Wage Orders as well as all interpretations of  
8 these laws by California Courts and administrative bodies, as well as any other law that is  
9 enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 10           a. All statutorily-specified penalties recoverable under PAGA as enumerated in the  
11           relevant California Labor Code provisions listed herein only if permitted by the  
12           PAGA statute, pursuant to Labor Code section 2699(a); and  
13           b. Default PAGA penalties for any violation of the enumerated list of Labor Code  
14           violations without a civil penalty recoverable under the PAGA, all in the default  
15           amounts provided by Labor Code section 2699(f).  
16           c. The proper measure of penalties under PAGA is the number of violations,  
17           whether those violations were committed as against PLAINTIFF or any  
18           Aggrieved Employee, whether a party to this action or not.

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

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**PRAYER FOR RELIEF**

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

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

Dated: May 4, 2023

**CROSNER LEGAL, PC**

By:   
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Attorneys for Plaintiff  
BENNY MURRAY II