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County of Alameda

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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 ALAMEDA

12 ANJOLIE TATE on behalf of the State of
13 California, and others similarly situated and
14 aggrieved,

15 Plaintiff,

16 v.

17 CASPER SLEEP, INC., a Delaware
18 Corporation; and DOES 1-100, inclusive,

19 Defendants.

Case No.: **23CV031523**

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

1
2 Plaintiff, ANJOLIE TATE, ("PLAINTIFF"), an individual on behalf of the State of
3 California, and all other Aggrieved Employees (as defined below), hereby files this Complaint
4 against Defendants CASPER SLEEP, INC., and DOES 1-100, inclusive, (collectively referred to
5 herein as "DEFENDANTS"). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

15 3. Venue is proper in this judicial district and the County of Alameda 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 Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a
19 PAGA action is proper in any county where the defendants committed Labor Code violations against
20 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.

24 5. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
25 PLAINTIFF worked for DEFENDANTS as a non-exempt store manager and/or non-exempt
26 assistant manager and/or non-exempt store supervisor and/or similar title from in or around April
27 2021 through in or around April 2022. PLAINTIFF worked for DEFENDANTS out of a couple of
28 DEFENDANTS' locations including but not limited to DEFENDANTS' Melrose Ave- Los

1 Angeles, CA store location and Torrance, CA store location.

2 6. Defendant CASPER SLEEP, INC., is a Delaware limited liability company, that at
3 all relevant times, was authorized to do business within the State of California and is doing business
4 in the State of California.

5 7. DEFENDANTS own, operate, otherwise manage companies that sell sleep products
6 online and in retail locations in including but not limited to various locations throughout California,
7 including but not limited to locations in the County of Alameda. DEFENDANTS sell mattresses,
8 pillows, sheets, bedding, and bed frames, among other sleep products.

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

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

25 **JOINT LIABILITY**

26 10. Under California law, the definition of the terms “to employ” are broadly construed
27 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
28 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)

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

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

22 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
23 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
24 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
25 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
26 policies and practices regardless of the location(s) where they worked. Among other things,
27 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
28 in DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control

1 over the day-to-day operations and employment matters, including the power to hire and fire, set
2 schedules, issue employee policies, and determine rates of compensation across its locations in
3 California; (3) DEFENDANTS utilize the same policies and procedures for all California
4 employees, including issuing the same employee handbooks and other form agreements; (4)
5 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
6 employment matters; and, (6) DEFENDANTS share employees.

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

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

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

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

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

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

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

16 **PAGA ALLEGATIONS**

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

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

25 20. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
26 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
27 limitations period and suffered one or more of the Labor Code violations set forth herein.
28 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and other Aggrieved

1 Employees, the civil penalties provided by PAGA solely on behalf of other Aggrieved Employees
2 and the State of California, plus reasonable attorney's fees and costs. PLAINTIFF has standing to
3 bring a PAGA cause of action on behalf of the State and other Aggrieved Employees, as PLAINTIFF
4 was jointly employed by DEFENDANTS and is affected by one or more of the alleged violations.
5 *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757; *See also Johnson*
6 *v. Maxim Healthcare Servs.*, (2021) 66 Cal.App.5th 924, 929 - 930. A PAGA plaintiff has authority
7 to seek penalties for all known violations committed by the employer – regardless of whether
8 Plaintiff experienced all violations personally. *Huff*, at 760-761.

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

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

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

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

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

26 **FACTUAL ALLEGATIONS**

27 25. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
28 worked for DEFENDANTS in the State of California. At all times referenced herein,

1 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
2 permitted them to work.

3 26. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
4 PLAINTIFF worked for DEFENDANTS as a non-exempt store manager and/or non-exempt
5 assistant manager and/or non-exempt store supervisor and/or similar title from in or around April
6 2021 through in or around April 2022. PLAINTIFF worked for DEFENDANTS out of a couple of
7 DEFENDANTS' locations including but not limited to DEFENDANTS' Melrose Ave- Los
8 Angeles, CA store location and DEFENDANTS' Torrance, CA store location. PLAINTIFF
9 regularly worked at least seven (7) to nine (9) hours per day, at least five (5) days per week. At
10 times, PLAINTIFF worked over ten (10) or eleven (11) hours in a single shift. DEFENDANTS paid
11 PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked. PLAINTIFF also
12 earned non-discretionary bonuses which DEFENDANTS failed to factor into the regular rate of pay
13 for purposes of calculating overtime and/or meal and/or rest period premium payments.

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.

5 31. Based on information and belief, at times, DEFENDANTS' electronic employee
6 time-keeping system malfunctioned such that Aggrieved Employees were required to either
7 reinitiate the system prior to being able to clock in and/or were unable to clock in at all for the start
8 of their shifts and/or clock back in from purported meal periods, resulting in consistent off-the-clock
9 work and the underpayment of minimum and overtime wages owed to Aggrieved Employees. Based
10 on information and belief, Aggrieved Employees experienced the same issues when clocking out
11 for shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not
12 recorded and not compensated and resulted in unpaid minimum and overtime wages.

13 32. Based on information and belief, DEFENDANTS' Kronos timekeeping software was
14 hacked in 2021 and DEFENDANTS failed to maintain accurate records of hours worked during pay
15 periods following the hack and instead paid PLAINTIFF and other Aggrieved Employees based on
16 scheduled hours worked rather than actual hours worked and/or otherwise failed to pay for all hours
17 worked due to a failure to maintain accurate records of the total hours worked, leading to unpaid
18 minimum and overtime wages.

19 33. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
20 required to complete off-the-clock work before beginning their scheduled shift and/or after
21 completing a scheduled shift. For example, PLAINTIFF was required to complete pre-shift and/or
22 post shift off-the-clock work duties that were not compensated. For example, after each shift,
23 PLAINTIFF was required to take out the store's trash after clocking out for her shift. This work
24 time took 5-10 minutes to complete and resulted in unpaid minimum and/or overtime wages.

25 34. Based on information and belief, other Aggrieved Employees were required to
26 complete off-the-clock work including but not limited to setting and/or disabling store security
27 alarms while off-the-clock and/or locking/unlocking store locations while off-the-clock resulting in
28 unpaid minimum and overtime wages.

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

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

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

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

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

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

1 wages owed to PLAINTIFF and other Aggrieved Employees.

2 41. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
3 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
4 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
5 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
6 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
7 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
8 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
9 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
10 completely. For example, at times PLAINTIFF was not afforded the opportunity to take a timely
11 uninterrupted 30-minute meal period due to the need to complete her job duties, understaffing,
12 and/or due to the lack of relieve workers available. At other times, PLAINTIFF's supervisor asked
13 her to clock out for a purported meal period but to continue working during the purported off-the-
14 clock meal period, resulting in meal period violations as well as unpaid wages.

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

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

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

27 45. Based on information and belief, despite DEFENDANTS' failure to provide lawful
28 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end

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

5 46. Moreover, based on information and belief, Aggrieved Employees who worked shifts
6 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.
7 For example, when PLAINTIFF worked more than ten hours in a shift, PLAINTIFF was not
8 provided with a second meal period.

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

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

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

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

1 compensation for purposes of calculating the owed meal period premium.

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

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

10 53. Based on information and belief, DEFENDANTS did not have a have a compliant
11 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
12 practice. For example, PLAINTIFF was frequently unable to take compliant off-duty rest periods
13 due to her need to complete her job duties and/or due to understaffing and/or the lack of relief
14 workers available. Based on information and belief, at other times, PLAINTIFF was required to
15 remain on DEFENDANTS' store premises during purported rest periods and/or was required to
16 completely skip her rest periods.

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

21 55. Moreover, based on information and belief, DEFENDANTS failed to provide any
22 form of a third rest period on shifts lasting longer than ten hours. For example, when PLAINTIFF
23 worked more than ten hours in a shift, PLAINTIFF was not provided with any version of a third rest
24 period.

25 56. Based on information and belief, DEFENDANTS implemented policies and/or
26 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
27 DEFENDANTS' control during rest periods.

28 57. Based on information and belief, Aggrieved Employees were pressured to complete

1 their work duties according to a designated schedule such that rest periods were only taken once
2 tasks were completed, and/or as time permitted.

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

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

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

26 61. Based on information and belief, wage statements issued by DEFENDANTS failed
27 to list all applicable hourly rates in effect during the pay period and the corresponding number of
28 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor

1 Code section 226(a)(9).

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

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

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

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

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

26 67. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
27 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
28 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.

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

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

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

18 70. Based on information and belief, DEFENDANTS shifted the costs of doing business
19 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
20 to, use of their personal cell phone/data usage for work related purposes, and/or face masks.

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

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

1 2802.

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

6 74. Based on information and belief, DEFENDANTS have and continue to have a
7 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
8 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
9 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
10 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
11 violation of California law, including but not limited to Labor Code Section 551.

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

22 76. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
23 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
24 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
25 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
26 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
27 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
28 used sick leave and the balance of paid sick leave.

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

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

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

16 80. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
17 that all employers with 26 or more employees are required to provide up to 80 hours for covered
18 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
19 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
20 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
21 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
22 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

27 82. All applicable IWC Wage Orders, Section 14(A-B) provides:
28

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

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

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

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

14 85. Moreover, based on information and belief, the nature of the work reasonably
15 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
16 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
17 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
18 of seats would not interfere with the performance of their duties. Based on information and belief,
19 to the extent seating was available, DEFENDANTS did not allow PLAINTIFF and other Aggrieved
20 Employees to sit even when it would not interfere with the performance of their duties.

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

26 87. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
27 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
28 were due and owing upon termination or resignation. Based on information and belief,

1 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
2 requirements of Labor Code sections 201-202.

3 88. Upon separation of employment, Aggrieved Employees' final paychecks were not
4 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
5 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
6 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
7 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
8 accrued rates.

9 89. **Non-Compete/ Non-Solicitation Agreements.** Non-compete/non-solicitation
10 agreements are illegal under California law. *See* California Business & Professions Code section
11 16600 - stating any non-compete provision between an employer and an employee, i.e., any contract
12 that restrains a person from engaging in a profession, trade or business will not be enforceable under
13 California law. California Labor Code section 432.5 states that it is illegal for an employer to require
14 an employee to agree in writing to any term that the employer knows is illegal. Violations of Section
15 432.5 are actionable under the California Labor Code Private Attorneys' General Act ("PAGA").

16 90. Based upon information and belief, DEFENDANTS required PLAINTIFF and other
17 Aggrieved Employees to sign non-compete/non-solicitation agreements as a condition of
18 hire/maintaining employment. This is illegal under California law. By having Aggrieved
19 Employees sign off on the illegal non-compete/non-solicitation agreements as a condition of
20 employment, DEFENDANTS violated, inter-alia, Labor Code section 432.5 (stating that "no
21 employer...shall require any employee or applicant for employment to agree, in writing, to any term
22 or condition which is known by such employer...to be prohibited by law."). Accordingly, Aggrieved
23 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
24 Labor Code section 2699(f)-(g).

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

26 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

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

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

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

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

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

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

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

13 Unlawful Inquires into Criminal History

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

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

23 Unlawful PAGA Waiver

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

27 103. An action pursuant to PAGA “...is a representative action on behalf of the state”
28 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements

1 purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and
2 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384
3 ("We conclude that where, as here, an employment agreement compels the waiver of representative
4 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.")

5 104. Moreover, the California Supreme Court has ruled that a court cannot compel
6 arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an
7 individual PAGA claim. *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 ("There is
8 no individual component to a PAGA action because 'every PAGA action ... is a representative
9 action on behalf of the state.'")

10 105. Upon information and belief, DEFENDANTS required PLAINTIFF and other
11 Aggrieved Employees to agree in writing to waive their right to a trial of representative claims,
12 which constitutes a waiver of their right to trial of PAGA claims in violation of California law,
13 which is unlawful and unenforceable under California law. By requiring PLAINTIFF and other
14 Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS required
15 written agreement to an unlawful provision as a condition of employment which is a violation of
16 labor code section 432.5.

17 106. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
18 engaged in these same herein described unlawful practices, which led to violations of the California
19 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
20 unlawful practices to all of its employees that it applied to PLAINTIFF.

21 **FIRST CAUSE OF ACTION**
22 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
23 **2698, ET SEQ.**

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

25 107. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

26 108. PLAINTIFF alleges this cause of action solely on behalf of other Aggrieved
27 Employees and the State of California.

28 **Failure to Keep Accurate Records**

109. California Labor Code § 1174 requires employers to keep "accurate and complete"

1 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
2 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
3 times during which all owed meal periods were provided each day.

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

9 111. DEFENDANTS' failure to keep "accurate and complete" payroll records for
10 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
11 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
12 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
13 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
14 period during which the referenced statutes and Wage Order provisions were violated.¹

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

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

22 113. Section (b) of Labor Code section 226 further requires employers to "afford current
23 and former employees the right to inspect or receive a copy of records pertaining to their
24 employment upon reasonable request to the employer." Section (c) of Labor Code section 226

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

1 provides that, “an employer who receives a written or oral request to inspect or receive a copy of
2 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
3 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
4 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
5 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
6 the employer. Lab. Code section 226(f).

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

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

20 **Meal Period Violations**

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

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

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

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

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

22 121. Based on information and belief, DEFENDANTS had and continue to have a policy
23 of rounding the start and end times of employees’ meal periods and/or automatically deducting thirty
24 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
25 Aggrieved Employees did not receive compliant meal periods.

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

28 123. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had

1 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
2 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
3 violation of California's meal period laws.

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

9 125. These unlawful meal period policies and practices result in violations of Labor Code
10 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
11 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
12 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
13 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

14 **Rest Period Violations**

15 126. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
16 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
17 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
18 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
19 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
20 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
21 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
22 1029). The rest period requirement obligates employers to permit and authorize employees to take
23 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
24 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
25 257. If the employer fails to provide any required rest period, the employer must pay the employee
26 one hour of pay at the employee’s regular rate of compensation for each workday the employer did
27 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
28 applicable IWC Wage Order, §12(B).

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

11 128. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
12 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
13 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
14 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
15 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
16 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

24 131. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
25 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
26 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
27 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
28 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into

1 the regular rate of compensation for purposes of determining the owed rest period premium.

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

5 **Minimum and Overtime Wage Violations**

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

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

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

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

28 137. Based on information and belief, DEFENDANTS had actual or constructive

1 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
2 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and
3 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
4 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
5 Employees.

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

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

17 140. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
18 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
19 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
20 Wage Orders, section 20.

21 **Statutory Wage Violations**

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

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

5 **Refusal to Make Payment**

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

14 **Standard Conditions of Labor Violations**

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

23 **Business Expense Violations**

24 144. California law requires employers to indemnify their employees for all necessary
25 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
26

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

1 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
2 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
3 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
4 incurred by the employee enforcing the rights granted by this section.”

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

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

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

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

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

26 150. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
27 full reimbursement for all reasonable expenses associated with carrying out their duties required
28 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business

1 expenses in violation of Labor Code section 2802.

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

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

9 **Wage Statement Violations**

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

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

27 155. Moreover, due to violations detailed above, including but not limited to,
28 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide

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

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

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

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

24 159. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
25 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
26 Employees over whether they received all wages owed to them.

27 160. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
28 they could not easily determine whether they received all wages owed to them and whether they

1 were paid for all hours worked.

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

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

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

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

19 **Violation of California Day of Rest Law**

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

24 166. Based on information and belief, DEFENDANTS have and continue to have a
25 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
26 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
27 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were

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

1 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
2 violation of California law, including but not limited to Labor Code Section 551.

3 **Seating Violations**

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

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

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

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

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

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

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

27 172. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
28 and other Aggrieved Employees' work reasonably permitted the use of seats. However,

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

6 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 but not limited to, Labor Code section 227.3.

2 **Untimely Payment of Final Wages**

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

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

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

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

25 188. **Non-Compete/ Non-Solicitation Agreements:** Non-compete/non-solicitation
26 agreements are illegal under California law. See California Business & Professions Code section
27 16600 - stating any non-compete provision between an employer and an employee, i.e., any contract
28 that restrains a person from engaging in a profession, trade or business will not be enforceable under

1 California law. California Labor Code section 432.5 states that it is illegal for an employer to require
2 an employee to agree in writing to any term that the employer knows is illegal. Violations of Section
3 432.5 are actionable under the California Labor Code Private Attorneys' General Act ("PAGA").

4 189. Based upon information and belief, DEFENDANTS required PLAINTIFF and other
5 Aggrieved Employees to sign non-compete/non-solicitation agreements as a condition of
6 hire/maintaining employment. This is illegal under California law. By having Aggrieved
7 Employees sign off on the illegal non-compete/non-solicitation agreements as a condition of
8 employment, DEFENDANTS violated, inter-alia, Labor Code section 432.5 (stating that "no
9 employer...shall require any employee or applicant for employment to agree, in writing, to any term
10 or condition which is known by such employer...to be prohibited by law."). Accordingly, Aggrieved
11 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
12 Labor Code section 2699(f)-(g).

13 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

14 190. *Unlawful Agreements.* Labor Code section 432.5 provides that "no employer...shall
15 require any employee or applicant for employment to agree, in writing, to any term or condition
16 which is known by such employer...to be prohibited by law." DEFENDANTS required and
17 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
18 conditions of employment including but not limited to unlawful criminal and/or financial checks as
19 a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

20 191. The California Labor Code places certain procedural and substantive limits on an
21 employers' ability to conduct employee background checks and on how employers can use the
22 information they obtain through those background checks. Labor Code section 1024.5 states that
23 employers, except for financial institutions, may order a credit check only if the individual works
24 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
25 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
26 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
27 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
28 background check, including but not limited to identifying an appropriate reason for the background

1 check, a separate consent form with required disclosures and certain formatting requirements,
2 additional forms such as a summary of rights, a way by which to request a copy of the report, as
3 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

21 Unlawful Inquires into Criminal History

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

26 198. Upon information and belief, DEFENDANTS, in violation of California law,
27 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
28 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of

1 employment and/or otherwise impermissibly inquired into criminal history on its employment
2 application in violation of California law.

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

8 Unlawful PAGA Waiver

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

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

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

24 203. Upon information and belief, DEFENDANTS required PLAINTIFF and other
25 Aggrieved Employees to agree in writing to waive their right to a trial of PAGA claims in violation
26 of California law. By requiring PLAINTIFF and other Aggrieved Employees to agree, in writing,
27 to an unlawful PAGA waiver, DEFENDANTS required written agreement to an unlawful provision
28 as a condition of employment which is a violation of labor code section 432.5.

1 204. Under the provisions of PAGA and the above mentioned Labor Code sections,
2 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
3 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
4 1198.5, 1199, 2699, 2699.3, 2802, 2810.5, and all applicable Wage Orders as well as all
5 interpretations of these laws by California Courts and administrative bodies, as well as any other
6 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

16 205. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
17 PLAINTIFF is entitled to recover civil penalties on behalf of other Aggrieved Employees and the
18 State of California, costs, and attorney's fees.

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PRAYER FOR RELIEF

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

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: April 18, 2023

CROSNER LEGAL, PC

By: 
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Attorneys for Plaintiff
ANJOLIE TATE