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10 Attorneys for Plaintiff MICHAEL NGO
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 RIVERSIDE

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

14 Plaintiff,

15 v.

16 LAZER SPOT, INC., a Georgia
17 corporation; and DOES 1-100, inclusive,

18 Defendants.

Case No.: **CVRI 23021 36**

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

1 Plaintiff, MICHAEL NGO (“PLAINTIFF”), an individual on behalf of PLAINTIFF, the
2 State of California, and all other Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants LAZER SPOT, INC., a Georgia corporation; and DOES 1-100,
4 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
5 believes and thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

21 **THE PARTIES**

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

24 5. PLAINTIFF was employed by DEFENDANTS in the State of California as a non-
25 exempt employee from on or around January 11, 2022, through on or about September 20, 2022.

26 6. PLAINTIFF worked for DEFENDANTS as a yard truck driver, truck driver and/or
27 similar title(s). DEFENDANTS regularly assigned PLAINTIFF to work at a warehouse yard located
28 on Venture Dr., in Jurupa Valley, California.

1 7. DEFENDANTS are a Georgia company that, at all relevant times, were authorized
2 to do business within the State of California and are doing business in the State of California.

3 8. DEFENDANTS own, operate or otherwise manage a transportation/logistics
4 business, doing business as including but not limited to Lazer, Lazer Spot, Lazer Spot, Inc., Lazer
5 Logistics and/or Lazer Logistics, Inc., with several yards, offices, facilities and/or locations in
6 California, including but not limited to, yards, offices, facilities and/or locations in Beaumont,
7 Bloomington, Carson, City of Industries, Colton, Commerce, Dixon, Fontana, Hesperia, Irwindale,
8 Lathrop, Mira Loma, Moreno Valley, Oakland, Ontario, Patterson City, Perris, Rancho Cucamonga,
9 Redlands, Rialto, Richmond, Sacramento, San Bernadino, Shafter, Stockton, Tracy, Visalia,
10 Victorville, Walnut, and Woodland.¹ Based on information and belief, DEFENDANTS also own,
11 operate, and/or otherwise manage offsite yards, customer yards, and/or campuses, including but not
12 limited to, the warehouse yard located on Venture Dr. in Jurupa Valley, California, where
13 DEFENDANTS regularly assigned PLAINTIFF to work during the Class Period (defined below).
14 DEFENDANTS own, operate, or otherwise manage facilities that operate the following brand
15 names and/or divisions: Lazer Spot, Lazer Gate, Lazer Shuttle, Lazer Shunt, Lazer Trailer, and Lazer
16 Mobile.²

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

23 10. PLAINTIFF is further informed and believes that, at all relevant times, each
24 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
25 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
26 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
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28 ¹ See <https://www.lazerlogistics.com/locations> (Last visited on February 1, 2023).

² See <https://www.lazerlogistics.com/whatwedo> (Last visited on February 1, 2023).

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

7 **JOINT LIABILITY**

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

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

1 over wages, hours and working conditions of PLAINTIFF and Aggrieved Employees; (2) suffered
2 or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF
3 and Aggrieved Employees to work for them.

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

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

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

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

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

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

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

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

26 **PAGA ALLEGATIONS**

27 20. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
28 of the State of California and all Aggrieved Employees, regarding violations of the California Labor

1 Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

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

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

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

18 22. On February 6, 2023, PLAINTIFF, through counsel, gave written notice by online
19 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
20 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
21 in this Complaint (“PAGA Notice”).

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

25 24. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
26 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
27 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
28 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code

1 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
2 has duly accrued.

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

6 **FACTUAL ALLEGATIONS**

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

11 27. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee from on
12 or around January 11, 2022, through on or around September 20, 2022. PLAINTIFF worked for
13 DEFENDANTS as a yard truck driver, truck driver and/or similar title(s), at PLAINTIFF's assigned
14 warehouse yard in Jurupa Valley, California. PLAINTIFF's job duties included but were not limited
15 to, operating industrial trucks within the warehouse yard, removing shipping container bolt seals,
16 transporting merchandise out of shipping containers, among other job duties. PLAINTIFF regularly
17 worked at least eleven (11) to twelve (12) hours per day, at least (6) days per week.

18 28. At all relevant times, PLAINTIFF was a non-exempt employee that was paid either
19 on an hourly basis for time counted by DEFENDANTS as hours worked. Based on information and
20 belief, DEFENDANTS also compensated PLAINTIFF and other Aggrieved Employees with non-
21 discretionary compensation, such as but not limited to shift differential pay and/or bonus / incentive
22 pay (e.g., for working night/graveyard shifts and/or safety bonuses) and/or other types of non-
23 discretionary pay.

24 29. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
25 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
26 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
27 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
28 rounding policies, and failure to relieve employees of all duties/employer control during unpaid

1 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
2 below.

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

9 31. For example, based on information and belief, Aggrieved Employees were required
10 to remain in and/or in close proximity to their assigned vehicles during unpaid meal periods and/or
11 were required to monitor their cell phones for work-related communications from dispatch, their
12 supervisor(s) and/or other Aggrieved Employees during unpaid meal periods and from time to time
13 were required to work through part and/or all of unpaid meal periods (including first and/or second
14 meal periods) due to the need to respond to work-related communications and/or complete other
15 work tasks. Moreover, based on information and belief, due to the pressure to complete assigned
16 worked duties, including but not limited to, threats of disciplinary action and/or termination of their
17 employment if they failed to meet DEFENDANTS' quotas, expectations, delivery deadlines and/or
18 minimum production requirements, Aggrieved Employees were unable to take uninterrupted meal
19 periods and would at times be forced to eat their meals and/or take purported meal periods while
20 driving between delivery locations/job sites and/or completing other work tasks.

21 32. Moreover, Aggrieved Employees were required to perform additional off-the-clock
22 work during unpaid meal periods. For example, on any day PLAINTIFF was afforded a meal period,
23 PLAINTIFF was required to first clock out for his meal period then walk a significant distance to
24 where DEFENDANTS required PLAINTIFF park his personal vehicle before PLAINTIFF could
25 then exit the yard. This time PLAINTIFF was required to spend under DEFENDANTS' control
26 while clocked out for unpaid meal periods, often several minutes in duration or more, was not
27 compensated and resulted in the consistent underpayment of minimum wages and straight time
28 wages owed to PLAINTIFF.

1 33. 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 34. For instance, DEFENDANTS' wage statements issued to PLAINTIFF show
6 DEFENDANTS' rounded PLAINTIFF's hours worked to at least the nearest quarter hour. For
7 example, DEFENDANTS' wage statement for PLAINTIFF for pay period beginning 7/17/22
8 through 7/23/22 shows a precise 40.00 "Driver Pay" hours worked and a precise 21.75 "Overtime"
9 hours worked. Based on information and belief, all of DEFENDANTS' wage statements issued to
10 PLAINTIFF similarly evidence rounding of PLAINTIFF' hours worked to at least the nearest
11 quarter hour. Based on information and belief, DEFENDANTS' wage statements issued to other
12 Aggrieved Employees also evidence time shaving/rounding of hours worked. DEFENDANTS'
13 failure to pay for all time worked by virtue of its time-rounding practices resulted in the
14 underpayment of minimum wages and straight time wages owed to PLAINTIFF and other NON-
15 Aggrieved Employees.

16 35. Moreover, on information and belief, at times, DEFENDANTS' electronic employee
17 time-keeping system / app at times malfunctioned such that Aggrieved Employees were required to
18 either reinitiate and/or otherwise troubleshoot the system /app prior to being able to clock in and/or
19 were unable to clock in at all for the start of their shifts and/or clock back in from meal periods,
20 resulting in off-the-clock work and the underpayment of wages owed to Aggrieved Employees,
21 Based on information and belief, Aggrieved Employees experienced the same issues when clocking
22 out for shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was
23 not recorded and not compensated and resulted in unpaid minimum wages owed to Aggrieved
24 Employees. Moreover, on occasions when DEFENDANTS' employee time-keeping system/app
25 malfunctioned /Aggrieved Employees were unable to clock in for the start of their shifts,
26 DEFENDANTS' policy and practice was to pay according to scheduled hours worked. For example,
27 PLAINTIFF recalls that when DEFENDANTS' time-keeping system /time-keeping app
28 malfunctioned /he was unable to clock in for the start of his shifts, he was paid merely for his

1 scheduled hours, rather than actual hours worked, resulting in the underpayment of minimum wages
2 and straight time wages owed to PLAINTIFF.

3 36. PLAINTIFF and other Aggrieved Employees were required to perform additional
4 off-the-clock work for which they were not compensated. For example, based on information and
5 belief, DEFENDANTS did not compensate PLAINTIFF and other Aggrieved Employees for time
6 spent donning and doffing personal protective equipment, safety equipment and/or uniforms/work
7 clothing (e.g., reflective vests, and/or face masks) during meal periods, rest periods, before the start
8 of a scheduled shift, and after completing a scheduled shift.

9 37. On information and belief, Aggrieved Employees were also required to complete off-
10 the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they
11 received and were required to respond to, including but not limited to, communications from
12 supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of
13 minimum wages and straight time wages owed to Aggrieved Employees.

14 38. Moreover, based on information and belief, Aggrieved Employees were required to
15 be at their trucks/machines/respective workstations at their scheduled shift start time or face
16 discipline. As such, Aggrieved Employees typically arrived at work at least fifteen minutes prior to
17 their scheduled shift start time so that they could perform any required pre-shift work, such as but
18 not limited to, bestowing their personal items in the employee lockers/storage area,
19 retrieving/compiling their work tools/equipment and/or trucks, inspecting and/or making any
20 necessary adjustments to their tools/equipment and/or trucks, and/or performing any required
21 maintenance tasks, donning work clothing/uniforms and/or protective equipment including but not
22 limited to reflective vests, and/or completing other work tasks so as to be ready to be at their assigned
23 vehicles/respective workstations at their scheduled shift start time as mandated by DEFENDANTS.
24 This pre-shift off-the-clock work was neither recorded nor compensated resulting in the substantial
25 underpayment of minimum wages and straight time wages owed to Aggrieved Employees.

26 39. Based on information and belief, Aggrieved Employees were also required to
27 perform post-shift off-the-clock work that was neither recorded nor compensated. For example,
28 based on information and belief, Aggrieved Employees put away their work tools/equipment,

1 performed equipment inspections, changed out of their work clothing/uniforms and protective gear
2 and/or completed other work tasks after clocking out for the end of their shifts, resulting in consistent
3 off-the-clock work and the underpayment of minimum and straight time wages owed to Aggrieved
4 Employees.

5 40. Based on information and belief, DEFENDANTS failed to pay Aggrieved
6 Employees for time they were required to spend completing orientation, policy questionnaires,
7 and/or time spent completing the onboarding process including but not limited to reviewing various
8 documents and policies provided by DEFEDANTS. Based on information and belief, this work time
9 was completed off-the-clock and was not compensated. For example, based on information and
10 belief, DEFENDANTS required Aggrieved Employees to review and sign various types of policies
11 and documents, including but not limited to, safety guidelines/safety awareness certifications,
12 employee time-keeping policies, among other documents, but they were not paid for all time spent
13 reviewing and/or completing certification as directed by DEFENDANTS.

14 41. Based in information and belief, DEFENDANTS implemented a time-rounding
15 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
16 compensable time because the time-rounding system implemented by DEFENDANTS would
17 almost always, if not always, result in understating actual compensable work time. For example,
18 DEFENDANTS' wage statement for PLAINTIFF for pay period beginning 7/17/22 through 7/23/22
19 shows a precise 40.00 "Driver Pay" hours worked and a precise 21.75 "Overtime" hours worked.
20 Based on information and belief, all of DEFENDANTS' wage statements issued to PLAINTIFF
21 similarly evidence rounding of PLAINTIFF's hours worked to at least the nearest quarter hour.
22 Based on information and belief, DEFENDANTS' wage statements issued to other Aggrieved
23 Employees also evidence time shaving/rounding of NON-EXEMPT AGGRIEVED EMPLOYEES'
24 hours worked. DEFENDANTS' failure to pay for all time worked by virtue of its time-rounding
25 practices resulted in the underpayment of minimum wages and straight time wages owed to
26 PLAINTIFF and other Aggrieved Employees. DEFENDANTS' failure to pay for all time worked
27 by virtue of its time-rounding practices resulted in the underpayment of minimum wages and straight
28 time wages owed.

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

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

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

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

21 46. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
22 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
23 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
24 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
25 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
26 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
27 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
28 from supervisors pressuring them to take non-compliant meal periods or skip meal periods

1 completely.

2 47. For example, based on information and belief, Aggrieved Employees that worked in
3 a non-driver position were required to work during unpaid meal periods and from time to time were
4 required to work through part and/or all of unpaid meal periods (including first and/or second meal
5 periods) due to the need to respond to work-related communications and/or complete other work
6 tasks. Moreover, based on information and belief, due to the pressure to complete assigned worked
7 duties, including but not limited to, threats of disciplinary action and/or termination of their
8 employment if they failed to meet DEFENDANTS' quotas, expectations, delivery deadlines and/or
9 minimum production requirements, Aggrieved Employees were unable to take uninterrupted meal
10 periods and would at times be forced to eat their meals and/or take purported meal periods while
11 while completing work tasks.

12 48. Moreover, Aggrieved Employees were required to perform additional off-the-clock
13 work during unpaid meal periods. At times, Aggrieved Employees were also forced to take their
14 meal periods late (after working more than five hours) due to the need to respond to work-related
15 communications, meet minimum production requirements and/or complete other work tasks.

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

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

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

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

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

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

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

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

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

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

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

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

9 60. Based on information and belief, DEFENDANTS did not have a have a compliant
10 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
11 practice. For example, Aggrieved Employees were consistently required to work through part and/or
12 all of their rest periods due to the need to respond to work-related communications, meet minimum
13 production requirements and/or complete other work tasks.

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

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

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

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

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

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

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

13 **67.** DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
14 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
15 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
16 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
17 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
18 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
19 other off-the-clock work policies and practices described above) which results in a violation of
20 Labor Code section 226(a). For example, DEFENDANTS' wage statements issued to PLAINTIFF
21 show DEFENDANTS rounded PLAINTIFF's hours worked to at least the nearest quarter hour,
22 thereby failing to list the accurate number of hours PLAINTIFF worked on DEFENDANTS' issued
23 wage statements.

24 **68.** Based on information and belief, wage statements issued by DEFENDANTS failed
25 to list all applicable hourly rates in effect during the pay period and the corresponding number of
26 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
27 Code section 226(a)(9). For example, based on information and belief, DEFENDANTS' wage
28 statements issued to PLAINTIFF and other Aggrieved Employees do not provide an accurate

1 overtime rate because instead of multiplying the regular rate of pay by one and one-half, the wage
2 statements provide an inaccurate overtime rate based on a single base rate of pay as opposed to the
3 regular rate of pay. For instance, DEFENDANTS' issued wage statement for PLAINTIFF for pay
4 period beginning 7/17/22 through 7/23/22 shows two separate line items for "Shift Diff" earnings,
5 one for hours paid at a rate of \$2.0000 and the other at a rate of \$3.0000. However, the single
6 "Overtime" rate listed is equal to one and one-half times the base rate pay of \$22.00, failing to take
7 into account the shift differential compensation rate into the regular rate for purposes of calculating
8 the overtime rate of pay and as such, fails to display the proper overtime rate(s) for each hour of
9 overtime worked by PLAINTIFF, in violation of Labor Code section 226(a), including but not
10 limited to, Labor Code section 226(a)(9). As described herein, DEFENDANTS failed to incorporate
11 all forms of non-discretionary compensation earned during the pay period, including but not limited
12 to, non-discretionary bonus/incentive pay and/or shift differential pay and/or other non-
13 discretionary compensation and/or multiple base rates of pay into the overtime pay rate calculation,
14 and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by
15 PLAINTIFF and other Aggrieved Employees, in violation of Labor Code section 226(a), including
16 but not limited to, Labor Code section 226(a)(9). As such, DEFENDANTS issued wage statements
17 to Aggrieved Employees that fail to display the correct total hours worked and/or display an
18 incorrect listing of total hours worked and/or fail to accurately display the corresponding number of
19 hours worked at the correct hourly rate by the employee, in violation of Labor Code section 226.

20 69. Moreover, based on information and belief, DEFENDANTS issued wage statements
21 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among
22 other things, failing to list the correct name and/or address of the legal entity that is the employer,
23 in violation of Labor Code section 226(a)(8). For example, DEFENDANTS issued wage statements
24 to PLAINTIFF that identify Lazer Spot, Inc. as the name of the legal entity that is the employer.
25 However, based on information and belief, various documents contained in PLAINTIFF's personnel
26 file, including without limitation, PLAINTIFF's employment application and/or other employment-
27 related policies and/or documents, identify "Lazer Logistics" and/or "Lazer Logistics, Inc." as the
28 name of the employer. Based on further information and belief, at times, EMPLOYER operated

1 and/or operates under the name “Lazer Logistics” and/or “Lazer Logistics, Inc.” As such,
2 DEFENDANTS issued wage statements to Aggrieved Employees that did not contain all statutorily
3 required information, including but not limited to, the correct name and/or address of the legal entity
4 that is the employer, in violation of including but not limited to, Labor Code section 226(a)(8).

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

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

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

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

16 74. **Failure to Produce Employment Records.** Based on information and belief,
17 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
18 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code
19 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
20 counsel, sent DEFENDANTS multiple written requests for time, pay and personnel records
21 including but not limited to a written request for payroll and personnel records mailed to
22 EMPLOYER on or around December 6, 2022, and another written request mailed on or around
23 January 11, 2023. Yet, DEFENDANTS failed to timely produce complete records within the time
24 periods delineated by California labor law. Based on information and belief, DEFENDANTS failed
25 and continues to fail to timely produce complete payroll and personnel records when requested by
26 other Aggrieved Employees. Based on information and belief, DEFENDANTS failed and continue
27 to fail to timely produce complete time, pay, and personnel records when requested by other
28 Aggrieved Employees.

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

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

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

21 78. Based on information and belief, DEFENDANTS shifted the costs of doing business
22 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
23 to, uniforms/work clothing and/or protective equipment/clothing, face masks and/or the use of
24 Aggrieved Employees' personal mobile phone and data usage for work related purposes to receive
25 and respond to work related messages and/or phone calls. For example, PLAINTIFF was required
26 to use his personal phone to communicate with DEFENDANTS regarding scheduling and/or other
27 work tasks but was not reimbursed by DEFENDANTS for the expenses he incurred from this
28 business use of his personal cell phone.

1 79. Based on information and belief, Aggrieved Employees were improperly required to
2 pay for additional business expenses that are supposed to be the responsibility of DEFENDANTS.
3 For example, based on information and belief, Aggrieved Employees were improperly required to
4 pay for business expenses that are the responsibility of DEFENDANTS, including but not limited
5 to, cost of gas, costs of truck repairs, fines, cleaning fees and/or other work-related fees, incurred as
6 a direct consequence of the discharge of their assigned job duties without receiving any and/or full
7 reimbursement from DEFENDANTS for these expenses.

8 80. Based on information and belief, DEFENDANTS regularly failed to reimburse and
9 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
10 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
11 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
12 assigned by DEFENDANTS.

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

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

27 83. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
28 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their

1 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
2 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
3 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
4 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
5 used sick leave and the balance of paid sick leave.

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

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

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

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

28 88. **Failure to Pay Vested Vacation/Paid Time Off:** Based on information and belief,

1 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
2 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
3 failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of
4 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

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

10 90. Upon separation of employment, Aggrieved Employees' final paychecks were not
11 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
12 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
13 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
14 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
15 accrued rates. For example, DEFENDANTS terminated PLAINTIFF's employment on or about
16 September 20, 2022, however, DEFENDANTS failed to provide PLAINTIFF with any final
17 paycheck at the time of termination.

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

19 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

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

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

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

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

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

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

5 Unlawful Inquires into Criminal History

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

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

15 102. Unlawful PAGA Waiver

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

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

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

1 action on behalf of the state.”)

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

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

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

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

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

17 **Failure to Keep Accurate Records**

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

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

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

1 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
2 period during which the referenced statutes and Wage Order provisions were violated.³

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

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

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

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

25 ³ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

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

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

8 **Meal Period Violations**

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

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

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

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

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

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

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

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

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

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

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

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

2 **Rest Period Violations**

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

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

27 128. Aggrieved Employees that were employed in a non-driver position did not receive
28 legally compliant, timely 10-minute rest periods for every four (4) hours worked or major fraction

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

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

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

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

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

22 **Minimum and Overtime Wage Violations**

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

1 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

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

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

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

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

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

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

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

10 **Statutory Wage Violations**

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

22 **Refusal to Make Payment**

23 142. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
24 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
25 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
26 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
27 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
28 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil

1 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
2 each Aggrieved Employee, for each pay period during which the statute provisions were violated.⁴

3 **Standard Conditions of Labor Violations**

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

12 **Business Expense Violations**

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

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

26 _____
27 ⁴ 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 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

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

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

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

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

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

19 151. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved
20 Employees have suffered injury in that they were not completely reimbursed as mandated by
21 California law.

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

26 **Wage Statement Violations**

27 153. California law requires every employer semi-monthly or at the time of each payment
28 of wages to furnish its employees with an accurate itemized wage statement in writing that contains

1 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
2 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
3 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
4 is paid; (7) the name of the employee and only the last four digits of his or her social security number
5 or an employee identification number other than a social security number; (8) the name and address
6 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
7 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

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

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

26 156. As explained above, wage statements issued by DEFENDANTS failed to list the
27 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
28 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and

1 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
2 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
3 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
4 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

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

15 160. DEFENDANTS' failure to accurately list all hours worked on all wage statements
16 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
17 Employees over whether they received all wages owed to them.

18 161. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
19 they could not easily determine whether they received all wages owed to them and whether they
20 were paid for all hours worked.

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

24 163. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
25 Aggrieved Employees with accurate, itemized wage statements.

26 164. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
27 Employees have suffered injury. The absence of accurate information on their wage statements has
28 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and

1 mathematical computations to determine the amount of wages owed, and will cause difficulty and
2 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
3 submission of inaccurate information about wages and amounts deducted from wages to state and
4 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
5 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
6 and pay records than if DEFENDANT had complied with its legal obligations.

7 165. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
8 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
9 during which the statute provisions were violated. ⁵

10 **Sick Leave Violations**

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

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

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

27 169. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records

28 ⁵ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
2 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
3 were entitled to the maximum number of hours accruable.

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

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

10 172. On information and belief, PLAINTIFF alleges that all of these practices were
11 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

1 off upon termination.

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

7 **Untimely Payment of Final Wages**

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

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

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

27 180. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
28 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or

1 256.

2 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

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

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

28 185. Based on further information and belief, DEFENDANTS required Aggrieved

1 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
2 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
3 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
4 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

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

10 Unlawful Inquires into Criminal History

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

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

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

25 Unlawful PAGA Waiver

26 191. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring
27 PLAINTIFF and other Aggrieved Employees to agree in writing to other unlawful agreements,
28 including but not limited to, an unlawful waiver of PAGA and/or representative actions as a

1 condition of employment.

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

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

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

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

- 24 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
25 relevant California Labor Code provisions listed herein only if permitted by the
26 PAGA statute, pursuant to Labor Code section 2699(a); and
27 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
28 violations without a civil penalty recoverable under the PAGA, all in the default

amounts provided by Labor Code section 2699(f).

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

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

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PRAYER FOR RELIEF

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

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

Dated: April 21, 2023

CROSNER LEGAL, PC

By: 
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MICHAEL NGO