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11 As an individual and on behalf of all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 VICTOR HERNANDEZ, as an individual
15 on behalf of himself and on behalf of all
16 others similarly situated,

17 Plaintiff,

18 v.

19 BRAGG INVESTMENT COMPANY,
20 INC., a California Corporation; and DOES
21 1-100, inclusive,

22 Defendants.

Case No.: 23STCV07041

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized Wage Statements**
6. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
7. **Failure to Reimburse Business Expenses**
8. **Unfair Competition *and***
9. **Violation of the Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

1 Plaintiff, VICTOR HERNANDEZ (“PLAINTIFF”), an individual on behalf of PLAINTIFF
2 and all other similarly situated Class Members (as defined below), and Aggrieved Employees
3 (defined below) hereby files this Complaint against Defendants BRAGG INVESTMENT
4 COMPANY, INC., a California Corporation; and DOES 1-100, inclusive, (collectively referred to
5 herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5
9 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
10 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
11 PLAINTIFF herein occurred in this this judicial district. *See also Crestwood Behavioral Health,*
12 *Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county
13 where the defendants committed Labor Code violations against some of its employees).

14 **THE PARTIES**

15 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
16 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
17 in the State of California as a non-exempt employee from in or around March 2022 through in or
18 around September 2022.

19 3. PLAINTIFF worked for DEFENDANTS as a crane oiler and/or similar title(s) and/or
20 position(s) from in or around March 2022 through on or around July 20, 2022. DEFENDANTS
21 regularly assigned PLAINTIFF to work at various locations, facilities, yards, and/or sites located in
22 Los Angeles County, including but not limited to, in the cities of Wilmington, California, and San
23 Pedro, California.

24 4. DEFENDANTS are a California corporation that, at all relevant times, were
25 authorized to do business within the State of California and are doing business in the State of
26 California.

27 5. DEFENDANTS own, operate, or otherwise manage a business that provides
28 commercial construction services, including but not limited to, crane, rigging, heavy transport and

industrial services, including but not limited to, piping, welding, steam service, bundle extraction, code repairs and electrical services.¹ DEFENDANTS own, operate and/or otherwise manage multiple locations, facilities, yards, and/or sites in Los Angeles County.

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

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

JOINT LIABILITY

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

¹ See https://braggcompanies.com/?adpprov=1&campaign_id=19628410245&keyword=bragg%20crane&gclid=Cj0KCQjw4-hBhCtARIsAc9gR3asawPCvwxLI4ma7smnfDJM61O73dPkYMzxJttac-G25xDKuGWbU-kaAvM6EALw_wcB#. (Last visited on March 29, 2023). 3

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

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

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

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

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

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

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

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

8 **CLASS ALLEGATIONS**

9 15. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly
10 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
11 seeks to represent are defined as follows and referred to as the "Class" or "Class Members":
12

13 All current and former non-exempt employees that worked either
14 directly or via a staffing agency for any of the DEFENDANTS at any
15 location in California at any time within the four years prior to the
16 filing of the initial Complaint ("Class Period").

17 a. Numerosity. While the exact number of Class Members is unknown to
18 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
19 all members is impractical under the circumstances of this case. PLAINTIFF is
20 informed and believes the Class consists of at least 100 individuals.

21 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
22 because common questions of law and fact predominate over individual issues.
23 Common questions include, but are not limited to, the following: (1) whether
24 DEFENDANTS understated hours worked and failed to pay all amounts due to
25 PLAINTIFF and the Class Members for wages earned, including minimum and
26 overtime wages, under California law; (2) whether DEFENDANTS provided
27 PLAINTIFF and the Class Members with all meal periods or premium payments
28 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
provided PLAINTIFF and the Class Members with all rest periods or premium

1 payments in lieu thereof, in compliance with California law; (4) whether
2 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
3 itemized wage statements in compliance with California law, displaying,
4 including but not limited to, the total hours worked during the pay period; (5)
5 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
6 wages due upon separation of employment; (6) whether DEFENDANTS failed
7 to reimburse PLAINTIFF and the Class Members for all business expenses; and
8 (7) whether DEFENDANTS violated California Business and Professions Code
9 sections 17200, *et seq.*

- 10 c. Ascertainable Class. The proposed Class is ascertainable as members can be
11 identified and located using information in DEFENDANTS' business, payroll
12 and personnel records.
- 13 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
14 PLAINTIFF suffered a similar injury as members of the Class as a result of
15 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
16 and pay all owed minimum and overtime wages, failure to provide proper meal
17 periods and rest periods or premium compensation in lieu thereof, failure to
18 provide accurate wage statements, failure to reimburse business expenses, and
19 failure to timely pay all wages due upon separation of employment.
- 20 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
21 Class Members. PLAINTIFF has no interests adverse to the interests of the other
22 Class Members. Counsel who represent PLAINTIFF are competent and
23 experienced in litigating similar class action cases and are California lawyers in
24 good standing. Counsel for PLAINTIFF have the experience and resources to
25 vigorously prosecute this case.
- 26 f. Superiority. A class action is superior to other available means for the fair and
27 efficient adjudication of this controversy since individual joinder of all members
28 of the class is impractical. Class action treatment will permit a large number of

1 similarly situated persons to prosecute their common claims in a single forum
2 simultaneously, efficiently, and without the unnecessary duplication of effort
3 and expense that numerous individual actions would engender. Furthermore, as
4 the damages suffered by each individual member of the Class may be relatively
5 small, the expenses and burden of individual litigation would make it difficult
6 or impossible for individual members of the Class to redress the wrongs done to
7 them, while an important public interest will be served by addressing the matter
8 as a class action. The cost to the court system of adjudication of such
9 individualized litigation would be substantial. Individualized litigation would
10 also present the potential for inconsistent or contradictory judgments. Finally,
11 the alternative of filing a claim with the California Labor Commissioner is not
12 superior, given the lack of discovery in such proceedings, the fact that there are
13 fewer available remedies, and the losing party has the right to a trial de novo in
14 the Superior Court.

15 **FACTUAL AND LEGAL ALLEGATIONS**

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

20 17. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
21 PLAINTIFF worked for DEFENDANTS as a crane oiler and/or similar title(s) and/or position(s)
22 from in or around March 2022 through on or around July 20, 2022. DEFENDANTS regularly
23 assigned PLAINTIFF to work at various locations, facilities, yards, and/or sites located in Los
24 Angeles County, including but not limited to, in the cities of Wilmington, California, and San Pedro,
25 California. PLAINTIFF typically worked at least eight (8) to fifteen (15) hours per day, at least five
26 (5) days per week.

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

1 compensated PLAINTIFF with additional base rates of pay based on the type of work performed
2 and/or with multiple rates of base pay in one workweek and/or pay period.

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

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

16 21. Based on information and belief, Class Members and Aggrieved Employees were
17 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time entries
18 or paying according to scheduled hours worked instead of actual time worked, and/or mandated off-
19 the clock work policies and/or practices. For example, DEFENDANTS wage statements for
20 PLAINTIFF evidence rounding of PLAINTIFF's total hours worked to at least the nearest quarter,
21 half and/or whole hour. For example, DEFENDANTS' wage statement for PLAINTIFF for pay
22 period beginning on April 25, 2022, and ending on May 1, 2022, shows two entries for "Reg" hours
23 worked, one with precisely 1.50 hours worked and the other with precisely 14.50 hours worked,
24 with an "OT" category reflecting precisely .50 overtime hours worked. Similarly, DEFENDANTS'
25 wage statement for PLAINTIFF for pay period beginning on May 30, 2022, and ending on June 5,
26 2022, shows precisely 8.00 regular hours worked. Based on information and belief, DEFENDANTS
27 rounded PLAINTIFF's and other Class Members and Aggrieved Employees' total hours worked to
28 at least the nearest quarter, half and/or whole hour, during most if not all pay periods during the Class

1 Period, resulting in the consistent underpayment of minimum wages and overtime wages owed to
2 PLAINTIFF and other Class Members and Aggrieved Employees.

3 22. Based on information and belief, DEFENDANTS shaved time off of Class Members
4 and Aggrieved Employees' total recorded hours worked and/or required Class Members and
5 Aggrieved Employees to record only their scheduled hours worked rather than actual time worked
6 and/or otherwise forego recording all work time, resulting in the consistent underpayment of
7 minimum wages and overtime wages owed to Class Members and Aggrieved Employees.

8 23. Based on information and belief, DEFENDANTS required Class Members and
9 Aggrieved Employees to be at their assigned workstations at the start of a scheduled shift, thereby
10 forcing Class Members and Aggrieved Employees to gather work related equipment and/or safety
11 gear prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-
12 shift off-the-clock work. Based on information and belief, DEFENDANTS also failed to
13 compensate Class Members and Aggrieved Employees for post-shift off-the-clock work, such as
14 but not limited to, returning tools and/or equipment to DEFENDANTS'
15 facilities/locations/sites/yards, performing maintenance or cleaning-related tasks and/or completing
16 other work tasks.

17 24. Based on information and belief, DEFENDANTS did not compensate Class
18 Members and Aggrieved Employees for all time spent donning and doffing personal protective
19 equipment, safety equipment and/or uniforms/work clothing (e.g., hard hats, goggles/protective
20 eyewear, steel-toed boots, fire-resistant gear, gloves, and/or face masks) during meal periods, rest
21 periods, before the start of a scheduled shift, and/or after completing a scheduled shift.

22 25. Based on information and belief, DEFENDANTS required/requires Class Members
23 and Aggrieved Employees to travel between DEFENDANTS' yards, facilities/locations and/or
24 between job sites without compensating Class Members and Aggrieved Employees for the travel
25 time, resulting in off-the-clock work and the underpayment of minimum wages and overtime wages
26 owed to Class Members and Aggrieved Employees.

27 26. Based on information and belief, Class Members and Aggrieved Employees were
28 also pressured to complete at least some of their work tasks off-the-clock in order to meet

1 DEFENDANTS' goals and expectations. For example, based on information and belief,
2 PLAINTIFF and other Class Members and Aggrieved Employees were required to complete off-
3 the-clock work outside of scheduled shifts due to, including but not limited to, work-related phone
4 calls and/or messages they received to their personal phones and were required to respond to,
5 including but not limited to, communications from supervisors regarding scheduling and/or other
6 work tasks, resulting in the underpayment of wages owed to Class Members and Aggrieved
7 Employees.

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

13 28. Based on further information and belief, DEFENDANTS implemented a time-
14 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
15 Aggrieved Employees of compensable time because the time-rounding system implemented by
16 DEFENDANTS would almost always, if not always, result in understating actual compensable work
17 time. For example, as explained above, wage statements issued by DEFENDANTS to PLAINTIFF
18 evidence rounding of PLAINTIFF's total hours worked to at least the nearest quarter, half and/or
19 whole hour, resulting in DEFENDANTS' failure to pay PLAINTIFF for all hours worked and the
20 consistent underpayment of minimum wages and overtime wages owed to PLAINTIFF. Based on
21 information and belief, DEFENDANTS also systemically rounded other Class Members and
22 Aggrieved Employees' total hours worked to at least the nearest quarter, half and/or whole hour,
23 resulting in the consistent underpayment of minimum wages and overtime wages owed to those
24 Class Members and Aggrieved Employees.

25 29. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
26 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
27 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
28 minimum wages owed to PLAINTIFF and Class Members and Aggrieved Employees as well as

1 unpaid overtime wages for those Class Members and Aggrieved Employees who worked more than
2 eight (8) hours in a day and/or more than forty (40) hours in a week.

3 30. Based on information and belief, DEFENDANTS had actual and/or constructive
4 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
5 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
6 underpayment of minimum wages owed to PLAINTIFF and other Class Members and Aggrieved
7 Employees, in violation of California's minimum and overtime wage laws.

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

12 32. Based on information and belief, DEFENDANTS sometimes paid PLAINTIFF and
13 other Class Members and Aggrieved Employees multiple rates of base pay in one workweek but
14 failed to incorporate all multiple rates of base pay into the regular rate of pay for purposes of
15 calculating the owed overtime rate. For example, at times, PLAINTIFF earned multiple base pay
16 rates during the same workweek, however DEFENDANTS failed to incorporate all/both base pay
17 rates into the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the
18 miscalculation and underpayment of overtime wages owed to PLAINTIFF. Based on information
19 and belief, DEFENDANTS similarly failed to incorporate multiple base rates of pay earned in a
20 workweek by other Class Members and Aggrieved Employees into the regular rate of pay used to
21 calculate the owed overtime rate(s), resulting in unpaid wages to Class Members and Aggrieved
22 Employees.

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

28 34. **Meal Period Violations.** PLAINTIFF and other Class Members and Aggrieved
12
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1 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
2 at least one meal period. However, PLAINTIFF and other Class Members and Aggrieved
3 Employees would not receive legally compliant thirty (30) minute first and second meal periods.
4 Based on information and belief, Class Members and Aggrieved Employees were consistently
5 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
6 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due
7 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
8 pressuring them to take non-compliant meal periods or skip meal periods completely.

9 35. Based on information and belief, other Class Members and Aggrieved Employees
10 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
11 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
12 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
13 duties, and/or the need to meet DEFENDANTS' goals and expectations.

14 36. For example, DEFENDANTS only allowed for a single purported meal period per
15 shift even on shifts lasting longer than ten and/or twelve and/or fifteen hours, and PLAINTIFF was
16 frequently required to work through his single meal period due to lack of relief workers/coverage,
17 the need to finish jobs/tasks on time, respond to work-related communications and/or complete other
18 work tasks. Other times, PLAINTIFF was forced to take his single meal period far beyond the fifth
19 hour of work due to lack of relief workers/coverage, the need to finish jobs/tasks on time, respond
20 to work-related communications and/or complete other work tasks.

21 37. Based on information and belief, at times, Class Members and Aggrieved Employees
22 were required to return to work while clocked out for meal periods due to the need to respond to
23 finish jobs on time, respond to work-related communications and/or complete other work tasks,
24 resulting in DEFENDANTS' failure to pay Class Members and Aggrieved Employees for all hours
25 worked and the underpayment of minimum wages and overtime wages owed to Class Members and
26 Aggrieved Employees. Based on information and belief, DEFENDANTS had and continue to have
27 a uniform policy and practice of automatically deducting at least thirty minutes of time per shift
28 from Class Members and Aggrieved Employees' total hours worked for meal periods that were not

1 taken, worked through and/or during which Class Members and Aggrieved Employees were not
2 relieved of all duties and employer control, resulting in consistent off-the-clock work and the
3 underpayment of minimum wages and overtime wages owed to Class Members and Aggrieved
4 Employees, among other violations of the labor code described herein.

5 38. Based on information and belief, DEFENDANTS implemented policies and/or
6 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
7 DEFENDANTS' control during unpaid meal periods. For example, based on information and
8 belief, Class Members and Aggrieved Employees were required to remain tethered to their assigned
9 worksites/workstations and/or were required to monitor and be responsive to work communication
10 devices during unpaid meal periods and as such were not relieved of all duties and DEFENDANTS'
11 control during unpaid meal periods, resulting in denied meal periods and DEFENDANTS' failure
12 to pay Class Members and Aggrieved Employees for all hours worked, in violation of California's
13 minimum wage and overtime wage laws, among other labor code violations described herein.

14 39. Based on information and belief, DEFENDANTS required Class Members and
15 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
16 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
17 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
18 unaccounted pre-shift off-the-clock work.

19 40. Based on information and belief, despite DEFENDANTS' failure to provide lawful
20 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
21 times of PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods and/or
22 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
23 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
24 Members and Aggrieved Employees did not receive lawful meal periods.

25 41. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
26 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
27 compliant thirty (30) minute second meal period. For example, when PLAINTIFF worked shifts
28 lasting longer than ten and/or twelve hours, PLAINTIFF was not afforded any version of a second

1 meal period.

2 42. Furthermore, per DEFENDANTS' uniform policy and practice, Class Members and
3 Aggrieved Employees who worked shifts of more than fifteen hours did not receive a third legally
4 compliant thirty (30) minute second meal period. For example, when PLAINTIFF worked shifts
5 lasting longer than fifteen hours, PLAINTIFF was not afforded any version of a second meal period.

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

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

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

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

28 47. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 PLAINTIFF and other Class Members and Aggrieved Employees with legally compliant rest
2 periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable,
3 are provided in the middle of the work period, as required by law.

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

8 49. Based on information and belief, DEFENDANTS did not have a have a compliant
9 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
10 practice.

11 50. For example, PLAINTIFF rarely, if ever, received a legally compliant rest period
12 during his employment due to lack of relief workers/coverage, being restricted to the work
13 site/denied a suitable resting area, the need to finish jobs/tasks on time, respond to work-related
14 communications and/or complete other work tasks.

15 51. DEFENDANTS further failed to authorize and permit rest periods that were a “net”
16 ten minutes in a suitable rest area and instead, to the extent any rest periods were provided at all,
17 limited Class Members and Aggrieved Employees to only ten-minute rest periods, requiring them
18 to be back at their workstations within ten minutes of leaving, in violation of California rest period
19 law.

20 52. Based on information and belief, Class Members and Aggrieved Employees’ rest
21 periods were interrupted, cut short, on duty, restricted to work premises and/or late due to
22 understaffing, the nature and constraints of their job duties, and/or due to commentary from
23 supervisors/managers pressuring them to skip rest periods completely or otherwise take non-
24 compliant rest periods.

25 53. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
26 lasting longer than ten hours.

27 54. Based on information and belief, DEFENDANTS implemented policies and/or
28 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of

1 all duties and DEFENDANTS' control during rest periods.

2 55. Based on information and belief, Class Members and Aggrieved Employees were
3 pressured to complete their work duties according to a designated schedule such that rest periods
4 were only taken once tasks were completed, and/or as time permitted.

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

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

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

1 59. Based on information and belief, wage statements issued by DEFENDANTS to
2 PLAINTIFF and other Class Members and Aggrieved Employees failed to list all applicable hourly
3 rates in effect during the pay period and the corresponding number of hours worked at each hourly
4 rate by the employee, in violation of Labor Code section 226(a)(9). For example, DEFENDANTS'
5 wage statements issued to PLAINTIFF do not provide an accurate overtime rate because instead of
6 multiplying the regular rate of pay by one and one-half, the wage statements provide an inaccurate
7 overtime rate that is one and one-half times the lower of the two base rates of pay rather than an
8 accurate overtime rate that is one- and one-half times PLAINTIFF's regular rate of pay. As such,
9 DEFENDANTS issued wage statements to Class Members and Aggrieved Employees that were
10 inaccurate in violation of Labor Code section 226(a) because among other things the wage
11 statements fail to list all applicable hourly rates in effect during the pay period and the corresponding
12 number of hours worked at each pay rate, in violation of Labor Code section 226(a)(9).

13 60. As described herein, based on information and belief, DEFENDANTS also failed to
14 incorporate all forms of non-discretionary compensation, such as, but not limited to,
15 bonuses/incentive pay and/or shift differential pay and/or other types of non-discretionary
16 remuneration earned during the pay period into the overtime pay rate calculation, and as such, failed
17 to display the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other
18 Class Members and Aggrieved Employees.

19 61. Moreover, based on information and belief, DEFENDANTS issued wage statements
20 to PLAINTIFF and Class Members and Aggrieved Employees that further violate Labor Code
21 section 226(a), by among other things, failing to list the correct name and/or address of the legal
22 entity that is the employer.

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

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

1 information and belief, DEFENDANTS untimely provide final wages to Class Members and
2 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

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

9 65. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
10 upon discharge of employment. For example, based on information and belief, at times, Class
11 Members and Aggrieved Employees experienced breaks in their employment caused by
12 DEFENDANTS whereby Class Members and Aggrieved Employees would not be called in for work
13 for longer than a single pay period due to including but not limited to DEFENDANTS' lack of work
14 or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS
15 failed to timely pay all owed wages at the end of such periods of employment, in violation of
16 including but not limited to Labor Code section 201-202.

17 66. These violations subject DEFENDANTS to civil penalties under Labor Code section
18 203, 210, and/or 256.

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

25 68. Based on information and belief, DEFENDANTS shifted the costs of doing business
26 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
27 including but not limited to, uniforms/work clothing/shoes/personal protective/safety gear and/or
28 the use of Class Members and Aggrieved Employees' personal mobile phones, cost of internet

1 and/or data usage for work related purposes, including but not limited to, to receive and respond to
2 work related messages and/or phone calls. For example, PLAINTIFF consistently received
3 calls/messages to his personal cellphone/mobile device from his supervisor and/or the owner of the
4 company about work-related matters. DEFENDANTS did not provide PLAINTIFF with any
5 reimbursement for this business use of his personal cell phone/mobile device.

6 69. PLAINTIFF was also required to purchase his own steel-toed boots and specific fire-
7 resistant clothing that DEFENDANTS required PLAINTIFF and other Class Members and
8 Aggrieved Employees wear for work, however DEFENDANTS did not provide PLAINTIFF and
9 other Class Members and Aggrieved Employees with any reimbursement for the expenses incurred
10 in connection with the purchase and/or maintenance of work uniforms/clothing/protective
11 equipment and boots/safety gear.

12 70. Additionally, based on information and belief, Class Members and Aggrieved
13 Employees were not reimbursed for the business use of their personal vehicles, including mileage,
14 wear and tear, and cost of fuel when they were required to drive between job sites, and/or use their
15 personal vehicles in carrying out the duties assigned by DEFENDANTS. For example, based on
16 information and belief, DEFENDANTS required Class Members and Aggrieved Employees to use
17 their personal vehicles to drive between job sites and/or use their personal vehicles for other work
18 purposes including but not limited to transporting tools, without providing any and/or full
19 reimbursement for the vehicle-related expenses incurred in connection therewith. As such,
20 DEFENDANTS failed to compensate Class Members and Aggrieved Employees at the legally
21 mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant
22 period.

23 71. Based on information and belief, DEFENDANTS failed to reimburse Class Members
24 and Aggrieved Employees for expenses associated with having to purchase and/or maintain their
25 own hand tools and/or equipment required to perform their assigned job duties.

26 72. Based on information and belief, DEFENDANTS regularly failed to reimburse and
27 indemnify Class Members and Aggrieved Employees for business expenses. Pursuant to California
28 Labor Code section 2802, PLAINTIFF and Class Members and Aggrieved Employees were entitled

1 to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders
2 and/or carrying out the duties assigned by DEFENDANTS.

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

7 74. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
8 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
9 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

10 **FIRST CAUSE OF ACTION**

11 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
12 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

13 75. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

14 76. It is fundamental that an employer must pay its employees for all time worked.
15 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
16 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
17 permits deductions from wages when the employer is required or empowered to do so by state or
18 federal law or when the deduction is expressly authorized in writing by the employee for specified
19 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223
20 prohibits the pay of less than a statutory or contractual wage scale.

21 77. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
22 Commission ("IWC") Wage Orders, an employer must pay its employees for all hours worked, up
23 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
24 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
25 period is unlawful.

26 78. DEFENDANTS violated California's minimum wage laws by failing to compensate
27 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
28 DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
completed during meal periods, other pre-shift²post-shift and/or otherwise off-the-clock work,

1 and/or payment according to scheduled hours worked rather than actual hours worked (described
2 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
3 wages.

4 79. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
5 Class Members for all hours worked.

6 80. Based on information and belief, DEFENDANTS had actual or constructive
7 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
8 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
9 periods, policy and practice of payment according to scheduled work time rather than actual work
10 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
11 owed to PLAINTIFF and other Class Members.

12 81. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
13 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
14 attorney's fees and costs, in an amount to be proved at trial.

15 **SECOND CAUSE OF ACTION**

16 **Recovery of Unpaid Overtime Wages**

17 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

18 82. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

19 83. Employees in California must be paid overtime, equal to one and one-half times the
20 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
21 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
22 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
23 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
consecutive day of work in a workweek, unless they are exempt.

24 84. PLAINTIFF and the Class Members worked overtime hours for which they were not
25 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding,
26 automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods,
27 other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to
28 scheduled hours worked rather than actual hours worked (described above), which resulted in the

1 failure to account for all hours worked and thus the denial of all owed overtime wages.

2 85. Based on information and belief, DEFENDANTS failed to pay twice Class
3 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
4 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
5 violation of California's overtime laws.

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

13 87. DEFENDANTS' conduct described above is in violation of California Labor Code
14 sections 510 and 1194 and all applicable Wage Orders.

15 88. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
16 wages, plus attorney's fees and costs, in an amount to be proved.

17 **THIRD CAUSE OF ACTION**

18 **Failure to Provide Meal Periods or Compensation in Lieu Thereof (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

19 89. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

20 90. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
21 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
22 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
23 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
24 waived, but only under the following circumstances: (1) if an employee's total work period in a day
25 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
26 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
27 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
28 waived by mutual consent of the employer and employee, but only if the first meal period was not

1 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
2 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
3 done so.

4 91. Employers must pay employees an additional hour of wages at the employees'
5 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
6 meal period, first meal period provided after five (5) hours, second meal period provided after 10
7 hours). Lab. Code § 226.7.

8 92. As explained above, PLAINTIFF and other Class Members were consistently unable
9 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
10 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
11 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
12 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
13 completely.

14 93. Based on information and belief, DEFENDANTS had and continue to have a policy
15 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
16 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class
17 Members did not receive compliant meal periods.

18 94. Moreover, based on information and belief, Class Members did not receive a timely,
19 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

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

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

97. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members are entitled to one additional hour's pay at the employee's regular rate of compensation for each day a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs, all in an amount to be proved at trial.

FOURTH CAUSE OF ACTION

**Failure to Provide Rest Periods or Compensation in Lieu Thereof
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

98. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

99. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period “insofar as practicable.” In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

100. If the employer fails to provide any required rest period, the employer must pay the employee one hour of pay at the employee's regular rate of compensation for each workday the employer did not provide at least one legally required rest period, pursuant to Labor Code section 226.7.

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

102. Based on information and belief, DEFENDANTS implemented policies and/or

1 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
2 control during rest periods. Based on further information and belief, Class Members were pressured
3 to complete their work duties according to a designated schedule such that rest periods were only
4 taken once tasks were completed, and/or as time permitted.

5 103. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
6 second, or third rest periods as required by California law.

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

13 105. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
14 hour of additional pay at the regular rate of compensation for each workday that a required rest
15 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
16 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
17 trial.

18 **FIFTH CAUSE OF ACTION**

19 **Failure to Furnish Accurate Itemized Wage Statements (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

20 106. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

21 107. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
22 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
23 wage statement accurately stating the following:

24 (1) gross wages earned, (2) total hours worked by the employee,
25 except for any employee whose compensation is solely based on a
26 salary and who is exempt from payment of overtime under
27 subdivision (a) of Section 515 or any applicable order of the Industrial
28 Welfare Commission, (3) the number of piece-rate units earned and
any applicable piece rate if the employee is paid on a piece-rate basis,
(4) all deductions, provided that all deductions made on written orders
of the employee may be aggregated and shown as one item, (5) net
wages earned, (6) the inclusive dates of the period for which the

employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

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

110. As explained above, wage statements issued by DEFENDANTS failed to list the "total hours worked" by PLAINTIFF and Class Members (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve Class Members of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices all described in greater detail

1 *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on
2 a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v.*
3 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

4 111. Based on information and belief, wage statements issued by DEFENDANTS failed
5 to list all applicable hourly rates in effect during the pay period and the corresponding number of
6 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
7 For example, as described herein, based on information and belief, DEFENDANTS failed to
8 incorporate all forms of non-discretionary compensation earned during the pay period into the
9 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
10 of overtime worked by Class Members.

11 112. Separately, and independent from the above allegations, DEFENDANTS issued
12 wage statements to PLAINTIFF and Class Members that violate Labor Code section 226(a)(8), by
13 failing to list the correct name and/or address of the legal entity that is the employer.

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

16 114. DEFENDANTS' failure to accurately list all hours worked on all wage statements
17 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
18 Members over whether they received all wages owed to them.

19 115. As a result, PLAINTIFF and other Class Members have suffered injury as they could
20 not easily determine whether they received all wages owed to them and whether they were paid for
21 all hours worked.

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

25 117. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
26 Class Members with accurate, itemized wage statements.

27 118. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
28 have suffered injury. The absence of accurate information on their wage statements has prevented

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

8 119. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
9 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
10 violation occurred and one hundred dollars per employee per violation for each subsequent pay
11 period, not to exceed an aggregate penalty of four thousand dollars per employee.

12 120. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
13 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
14 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
15 provide currently employed Class Members with inaccurate wage statements in violation of
16 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
17 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
18 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
19 with California Labor Code § 226(a).

20 121. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
21 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
22 attorneys' fees, and costs of suit.

23 **SIXTH CAUSE OF ACTION**

24 **Failure to Timely Pay All Wages Due Upon Separation of Employment** 25 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

26 122. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

27 123. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
28 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
payable immediately."

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

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

12 126. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
13 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days’
14 pay, plus attorney’s fees and costs, in an amount to be proved at trial.

15 **SEVENTH CAUSE OF ACTION**
16 **Failure to Reimburse Business Expenses**
17 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

18 127. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

25 129. Among other things, under California law, when employees must use their personal
26 cellphones for work-related purposes, the employer must reimburse them for a reasonable
27 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
28 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
required to use their personal cellphone for work-related purposes and not reimbursed for the use.

1 Id. 1144-1145. California law also requires employers to reimburse employees for automobile
2 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
3 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

4 130. As described above, PLAINTIFF and the Class Members were improperly required
5 to pay for business expenses that are legally the responsibility of the employer.

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

10 132. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
11 Members have suffered injury in that they were not completely reimbursed as mandated by
12 California law.

13 133. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
14 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
15 attorneys' fees, and costs of suit.

16 **EIGHTH CAUSE OF ACTION**

17 **Unfair Competition**

18 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

19 134. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

20 135. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
21 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
22 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
23 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
24 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
25 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
26 wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure
27 to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to
28 provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to,
including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary

1 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
2 number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and
3 practices, payment according to scheduled hours worked and/or other off-the-clock work policies
4 and practices).

5 136. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
6 California Labor Code, DEFENDANTS have gained a competitive advantage over other
7 comparable companies doing business in the State of California that comply with their obligations
8 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
9 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
10 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
11 minimum and overtime wages and to pay all wages due upon separation of employment of their
12 employees.

13 137. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
14 and Class Members have suffered injury in fact and lost money or property, as described in more
15 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
16 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
17 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
18 unlawful and unfair business practices.

19 138. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
20 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
21 engaging in each of the unlawful practices and policies set forth herein.

22 139. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
23 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
24 by law.

25 **NINTH CAUSE OF ACTION**

26 **Violation of the Private Attorneys General Act of 2004**

27 **(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)**

28 140. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

141. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,

1 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of PLAINTIFF,
2 the State of California and Aggrieved Employees, regarding violations of the California Labor Code
3 as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

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

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

19 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

20 143. On March 31, 2023, PLAINTIFF, through counsel, gave written notice by online
21 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
22 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
23 in this Complaint ("PAGA Notice").

24 144. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
25 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
26 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
27 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
28 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS

1 has duly accrued.

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

5 146. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
6 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
7 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510,
8 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
9 applicable Wage Orders.

10 147. As set forth above, DEFENDANTS have committed numerous violations of the
11 California Labor Code due to including but not limited to their failure to pay all owed minimum
12 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
13 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
14 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties
15 are in addition to any other relief available under the Labor Code.

16 148. Additionally, DEFENDANTS have violated the following Labor Code sections and
17 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

18 **Failure to Keep Accurate Records**

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

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

28 151. DEFENDANTS' failure to keep "accurate and complete" payroll records for
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
2 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
3 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
4 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
5 period during which the referenced statutes and Wage Order provisions were violated.²

6 **Statutory Wage Violations**

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

18 **Refusal to Make Payment**

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

25 ² 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 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.³

3 **Standard Conditions of Labor Violations**

4 154. 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 **Seating Violations**

13 155. Per section 12 of the applicable wage order, “[w]here practicable and consistent with
14 applicable industry-wide standards, all working employees shall be provided with suitable seats
15 when the nature of the process and the work performed reasonably permits the use of seats.”

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

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

24 158. Moreover, based on information and belief, the nature of the work reasonably
25 permitted the use of seats for at least part of the time that Aggrieved Employees were working.

26
27 ³ 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 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
2 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
3 of seats would not interfere with the performance of their duties.

4 159. The Aggrieved Employees worked in various positions. The nature of Aggrieved
5 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
6 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
7 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
8 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
9 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
10 separate civil penalty.

11 **Reporting Time Pay Violations.**

12 160. Section 5 of all applicable IWC Wage Orders, provides as follows:

13 161. (A) Each workday an employee is required to report for work and does report, but is
14 not put to work or is furnished less than half said employee's usual or scheduled day's work, the
15 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
16 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less
17 than the minimum wage. (B) If an employee is required to report for work a second time in any one
18 workday and is furnished less than two (2) hours of work on the second reporting said employee
19 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
20 minimum wage. (C) If an employee is required to report for work a second time in any one workday
21 and is furnished less than two (2) hours of work on the second reporting

22 162. Aggrieved Employees were not paid reporting time wages in accordance with
23 California law, including but not limited to the applicable IWC Wage Order, including but not
24 limited to Wage Order No. 16. For example, based on information and belief, at times, Aggrieved
25 Employees reported to work for a scheduled shift but were sent home and/or were not put to work
26 and were not paid all owed reporting time pay wages in accordance with California law.

27 163. Based on further information and belief, as described above, DEFENDANTS
28 required Aggrieved Employees to travel between DEFENDANTS' locations, facilities, and/or yards

1 without compensating Aggrieved Employees for the travel time, in violation of California's
2 minimum wage laws, overtime wage laws, and all applicable IWC Wage Orders, including but not
3 limited to, section 5. Based on information and belief, DEFENDANTS also failed to compensate
4 other Aggrieved Employees for all employer-mandated travel required after arriving at their first
5 assigned location at their regular rate(s) of pay, in violation of California law, including but not
6 limited to, IWC Wage Order 16, Section 5(A).

7 164. Based on information and belief, DEFENDANTS have a policy and practice of
8 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
9 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
10 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
11 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

12 **Unlawful Deductions**

13 165. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
14 an employee any part of wages theretofore paid by said employer to said employee." Based on
15 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
16 paychecks during the relevant period including but not limited to deducting costs of uniforms and/or
17 other business costs and/or deducting wages for purported overpayments from previous pay periods
18 and/or unlawfully deducting wages for negligently damaged property and/or deducting costs
19 advanced by DEFENDANTS from Aggrieved Employees' final paychecks. Such a practice is in
20 violation of including but not limited to, Labor Code Sections 221-222 which subjects
21 DEFENDANTS to civil penalties under Labor Code Section 2699.

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

28 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

25 178. *Unlawful Agreements.* Labor Code section 432.5 provides that "no employer...shall
26 require any employee or applicant for employment to agree, in writing, to any term or condition
27 which is known by such employer...to be prohibited by law." DEFENDANTS required and
28 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful

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

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

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

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

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

27 183. Based on further information and belief, DEFENDANTS knew that requiring
28 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a

1 condition of obtaining and/or holding employment was unlawful.

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

4 Unlawful Inquires into Criminal History

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

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

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

19 Unlawful PAGA Waiver

20 188. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring
21 PLAINTIFF and other Aggrieved Employees to agree in writing to other unlawful agreements,
22 including but not limited to, an unlawful waiver of PAGA and/or representative actions as a
23 condition of employment.

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

1 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

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

7 191. Upon information and belief, DEFENDANTS at times, required some Aggrieved
8 Employees to agree in writing to waive their right to a trial of PAGA claims in violation of California
9 law. By requiring such Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver,
10 DEFENDANTS required written agreement to an unlawful provision as a condition of employment
11 which is a violation of labor code section 432.5.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF,
14 Aggrieved Employees, and Class Members as follows:

- 15 1. For an order that the action be certified as a class action;
- 16 2. For an order that PLAINTIFF be appointed as class representative;
- 17 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
- 18 4. For compensatory damages according to proof;
- 19 5. For liquidated damages according to proof;
- 20 6. For penalties according to proof;
- 21 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
22 withheld from PLAINTIFF and the Class Members;
- 23 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
24 section 17200, *et seq.*, of the California Business and Professions Code;
- 25 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
- 26 10. For pre-judgment interest as permitted by law;
- 27 11. For attorney’s fees and costs reasonably incurred;
- 28 12. For civil penalties according to proof, including PAGA penalties (75% payable to

1 the LWDA and 25% payable to Aggrieved Employees); and
2 13. For such other and further relief that the Court deems just and proper.
3

4 Dated: July 14, 2023

CROSNER LEGAL, PC

6 By: 

7 Zachary M. Crosner, Esq.
8 Jamie Serb, Esq.
9 Attorneys for Plaintiff
10

11 **DEMAND FOR JURY TRIAL**

12 PLAINTIFF demands a trial by jury on all claims so triable.
13

14 Dated: July 14, 2023

CROSNER LEGAL, PC

16 By: 

17 Zachary M. Crosner, Esq.
18 Jamie Serb, Esq.
19 Attorneys for Plaintiff
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PROOF OF SERVICE
VICTOR HERNANDEZ V. BRAGG CRANE COMPANY et al.
Los Angeles Superior Court Case No 23STCV07041

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 9440 Santa Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

On July 14, 2023, I served true copies of the following document(s) described as

FIRST AMENDED CLASS ACTION COMPLAINT
on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ ONLY BY ELECTRONIC TRANSMISSION. Pursuant to the Court's Order re Electronic Service, I caused the documents described above to be E-Served through Case Anywhere by electronically mailing a true and correct copy through Case Anywhere to the addressee(s) listed

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 14, 2023, at Los Angeles, California.



Jessica Ball

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SERVICE LIST
VICTOR HERNANDEZ V. BRAGG CRANE COMPANY et al.
Los Angeles Superior Court Case No 23STCV07041

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