

1 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
2 JAMIE SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
3 BRANDON BROUILLETTE, ESQ. (SBN 273156)
bbrouillette@crosnerlegal.com
4 **CROSNER LEGAL, PC**
9440 Santa Monica Blvd. Suite 301
5 Beverly Hills, CA 90210
6 Tel: (866) 276-7637
Fax: (310) 510-6429

7 Attorneys for Plaintiff CRYSTAL GALLARDO
8 on behalf of the State of California,
9 and others similarly situated and aggrieved

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 CRYSTAL GALLARDO, on behalf of the
State of California, and others similarly
13 situated and aggrieved,

14 Plaintiff,

15 v.

16
17 USA VEIN CLINICS, INC., a California
Corporation; USA VASCULAR CENTERS
18 OF LOS ANGELES P.C., a California
Corporation; USA VEIN CLINICS OF
19 CHICAGO LLC, an Illinois Limited
Liability Company; MMPS OF
20 CALIFORNIA INC., a California
Corporation; MEDICAL MANAGEMENT
21 PROFESSIONAL SERVICES INC., an
Illinois Corporation; and DOES 1-100,
22 inclusive,

23 Defendants.

Electronically FILED by
Superior Court of California,
County of Los Angeles
8/17/2023 4:49 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By E. Galicia, Deputy Clerk

Case No.: **23STCV19753**

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

1 Plaintiff, CRYSTAL GALLARDO (“PLAINTIFF”), an individual on behalf of
2 PLAINTIFF, the State of California, and all other Aggrieved Employees (as defined below), hereby
3 files this Complaint against Defendants USA VEIN CLINICS, INC., a California Corporation; USA
4 VASCULAR CENTERS OF LOS ANGELES P.C., a California Corporation; USA VEIN CLINICS
5 OF CHICAGO LLC, an Illinois Limited Liability Company; MMPS OF CALIFORNIA INC., a
6 California Corporation; MEDICAL MANAGEMENT PROFESSIONAL SERVICES INC., an
7 Illinois Corporation; and DOES 1-100, inclusive, (collectively referred to herein as
8 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

9 **INTRODUCTION**

10 1. This is a representative action filed by PLAINTIFF on behalf of PLAINTIFF, all
11 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California’s
12 Private Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties
13 (75% payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
14 Employees) for DEFENDANTS’ violations of the California Labor Code as alleged below.

15 **JURISDICTION AND VENUE**

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

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

24 **THE PARTIES**

25 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
26 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
27 in the State of California as a non-exempt employee from in or around the end of August 2022
28 through on or around November 11, 2022.

5. PLAINTIFF worked for DEFENDANTS as an ultrasound technician and/or similar title(s) and/or position(s) from in or around the end of August 2022 through on or around November 11, 2022. PLAINTIFF worked for DEFENDANTS out of several of DEFENDANTS' California locations, including but not limited to, DEFENDANTS' facilities, centers, locations and/or clinics located in Glendale California, West Hollywood, California, and Valley Village, California.

6. DEFENDANTS are either a California corporation and/or an Illinois corporation and/or Illinois limited liability company, that, at all relevant times, were authorized to do business within the State of California and are doing business in the State of California.

7. DEFENDANTS own, operate, or otherwise manage vein treatment centers throughout the United States, with multiple facilities, centers, locations and/or clinics located in California, including but not limited to, facilities, centers, locations and/or clinics located in Glendale, California, West Hollywood, California, Valley Village, California, and Thousand Oaks, California.¹ .

8. 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.

9. 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

¹ See <https://www.usaveinclinics.com/company/locations/california/> (Last visited on March 20, 2023).

1 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
2 controlled, aided and abetted the conduct of all other Defendants.

3 **JOINT LIABILITY**

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

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

28 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times

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

13 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
14 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
15 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
16 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
17 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
18 considered the joint employers of PLAINTIFF and Aggrieved Employees. For example, based on
19 information and belief, the legal name of the employer as listed on PLAINTIFF's W2s and/or wage
20 statements from DEFENDANTS is: "MMPS of California Inc." However, most documents in
21 PLAINTIFF's personnel file, including without limitation, confidentiality agreement(s), various
22 employee health-related documents/vaccination and/or screening acknowledgments/other related
23 documents and/or employment-related policy documents all identify the following as the name(s)
24 of PLAINTIFF's employer: "USA Vascular Centers" and/or "USA Vein Clinics." Still, other
25 documents contained in PLAINTIFF's employment personnel file, including without limitation,
26 employee information form(s) and/or other employment-related documents list "MMPS" as the
27 name of the employer. Additionally, documents in PLAINTIFF's personnel file, such as but not
28 limited to, DEFENDANTS' purported disclosures and/or authorization to conduct a background

1 check on PLAINTIFF identify “Medical Management Professional Services Inc.” as the legal name
2 of the employer. Moreover, based on information and belief, DEFENDANTS, and each of them
3 maintain the same principal place of business and/or business mailing address and/or same agent
4 for service of process as provided to the California Secretary of State and/or Illinois Secretary of
5 State and/or maintain the same corporate headquarters located on Wainwright Drive in Northbrook,
6 Illinois, and/or use at least some of the same Human Resources personnel and attorneys to oversee
7 employment matters.

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

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

27 16. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
28 control over, applied the same policies and practices, and engaged in the same acts and omissions

1 with regard to the other Aggrieved Employees.

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

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

11 **PAGA ALLEGATIONS**

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

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

20 20. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor
21 Code section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable
22 statutory limitations period and suffered one or more of the Labor Code violations set forth herein.
23 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
24 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
25 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
26 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by
27 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
28 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations

1 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
2 *Id.* at 760-761.

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

4 21. On March 23, 2023, PLAINTIFF, through counsel, gave written notice by online
5 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
6 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
7 in this Complaint (“PAGA Notice”).

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

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

14 **FACTUAL ALLEGATIONS**

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

19 25. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
20 PLAINTIFF worked for DEFENDANTS as an ultrasound technician and/or similar title(s) and/or
21 position(s) from in or around the end of August 2022 through on or around November 11, 2022,
22 when PLAINTIFF resigned from her employment. DEFENDANTS also assigned PLAINTIFF to
23 attend to the front desk(s) and perform office-related job duties, including but not limited to, data
24 entry, scheduling patient appointments and/or answering phone calls. PLAINTIFF worked for
25 DEFENDANTS out of several of DEFENDANTS’ locations including but not limited to,
26 DEFENDANTS’ facilities, centers, locations and/or clinics located in Glendale, California, West
27 Hollywood, California, and Valley Village, California. PLAINTIFF regularly worked at least five
28 and one half (5 1/2) hours to seven (7) hours per day, at least (5) days per week. At all relevant

1 times, PLAINTIFF was a non-exempt employee that was paid on an hourly basis for time counted
2 by DEFENDANTS as hours worked.

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

10 27. 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 (usually at least sixty minutes) for meal periods, despite having actual and/or
13 constructive knowledge that PLAINTIFF and other Aggrieved Employees were subject to
14 DEFENDANTS' control during purported meal periods and/or were otherwise not afforded lawful
15 meal periods, depriving PLAINTIFF and Aggrieved Employees of all wages owed.

16 28. Based on information and belief, Aggrieved Employees were not paid for all hours
17 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
18 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
19 the clock work policies and/or practices. For example, based on information and belief,
20 DEFENDANTS's wage statements evidence that DEFENDANTS rounded PLAINTIFF's total
21 hours worked to at least the nearest quarter, resulting in the failure to pay PLAINTIFF for all time
22 worked, and the underpayment of wages owed to PLAINTIFF. Based on information and belief,
23 DEFENDANTS also rounded the total hours worked of other Aggrieved Employees, resulting in
24 the consistent failure to pay Aggrieved Employees for all time worked and the underpayment of
25 wages owed to Aggrieved Employees.

26 29. Based on information and belief, Aggrieved Employees would routinely clock in
27 early at the beginning of their shifts. However, based on information and belief, DEFENDANTS
28 systematically rounded the actual, clocked-in start times up to the scheduled start times of Aggrieved

1 Employees and/or to at least the nearest quarter hour, resulting in unpaid work time. Based on
2 information and belief, Aggrieved Employees would also routinely clock out after the end of their
3 scheduled shifts. However, DEFENDANTS systematically rounded the actual, clocked-out end
4 times to the scheduled end times of Aggrieved Employees and/or to at least the nearest quarter hour,
5 resulting in unpaid work time.

6 30. Based on information and belief, Aggrieved Employees were also pressured to
7 complete at least some of their work tasks off-the-clock in order to meet DEFENDANTS's goals
8 and expectations. For example, on information and belief, Aggrieved Employees were also required
9 to complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or
10 messages they received and were required to respond to, including but not limited to,
11 communications from supervisors regarding scheduling and/or other work tasks, resulting in the
12 underpayment of wages owed to Aggrieved Employees.

13 31. Based on information and belief, DEFENDANTS did not compensate Aggrieved
14 Employees for time spent donning and doffing uniforms/work clothing/personal protective/safety
15 equipment (e.g., face masks and/or gloves) during off-the-clock meal periods, before the start of a
16 scheduled shift, and after completing a scheduled shift.

17 32. Based on information and belief, DEFENDANTS required Aggrieved Employees to
18 undergo temperature screenings and/or other employer-mandated screenings prior to clocking in for
19 the start of their shifts, before clocking back in from meal periods and/or after clocking out for their
20 shifts, resulting in uncompensated work time, and the underpayment of minimum and overtime
21 wages owed to Aggrieved Employees.

22 33. Based on information and belief, Aggrieved Employees were required to perform
23 other pre-shift and/or post-shift off-the-clock work for which they were not compensated. For
24 example, based on information and belief, after completing a shift and clocking out for a shift,
25 Aggrieved Employees were required to keep working. For example, at times, based on information
26 and belief, DEFENDANTS required Aggrieved Employees to assist patients and/or complete other
27 work tasks after clocking out for a shift. This work time was completed off-the-clock/outside of the
28 scheduled shift and was uncompensated resulting in unpaid minimum and overtime wages owed to

1 Aggrieved Employees.

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

11 35. Based on information and belief, due to scheduling issues and/or understaffing,
12 Aggrieved Employees were at times required after working at their scheduled
13 location/facility/center/clinic to cover a shift at another of DEFENDANTS's
14 location/facility/center/clinic but were not compensated and/or not compensated in full for the time
15 spent driving/traveling to the second location/facility/center, resulting in the underpayment of
16 minimum wages owed to Aggrieved Employees.

17 36. Based on information and belief, DEFENDANTS failed to pay Aggrieved
18 Employees for time they were required to spend completing orientation, trainings, certifications
19 policy questionnaires, and/or time spent completing the onboarding process including but not
20 limited to reviewing various documents and policies provided by DEFEDANTS. Based on
21 information and belief, this work time was completed off-the-clock and was not compensated.

22 37. Based in information and belief, DEFENDANTS implemented a time-rounding
23 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
24 compensable time because the time-rounding system implemented by DEFENDANTS would
25 almost always, if not always, result in understating actual compensable work time. For example, as
26 explained above, based on information and belief, DEFENDANTS rounded PLAINTIFF's and
27 other Aggrieved Employees' total hours worked to at least the nearest quarter hour during most if
28 not all pay periods during the relevant period, which resulted in the consistent failure to pay

1 Aggrieved Employees for all time worked, the underpayment of minimum wages and overtime
2 wages owed to Aggrieved Employees as well as wage statement violations described below.

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

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

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

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

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

1 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
2 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
3 completely. For example, PLAINTIFF was usually if not always forced to take her meal period late
4 (i.e. after the fifth hour of work) due to the need to assist patients and/or complete other work tasks.
5 Based on information and belief, Aggrieved Employees were consistently forced to take late meal
6 periods and were at times required to assist patients, respond to work communications and/or
7 complete other work tasks while clocked out for meal periods resulting in unpaid wages and meal
8 period law violations. Based on information and belief, DEFENDANTS did not pay meal period
9 premiums for these interrupted and/or late meal periods, in violation of California's meal period
10 laws.

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

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

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

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

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

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

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

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

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

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

28 53. PLAINTIFF and other Aggrieved Employees were not adequately informed,

1 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
2 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
3 the taking or timing of duty-free rest periods.

4 54. Based on information and belief, DEFENDANTS did not have a have a compliant
5 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
6 practice. For example, based on information and belief, Aggrieved Employees were at times
7 required to assist patients, respond to work communications and/or complete other work tasks
8 during purported rest periods.

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

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

15 57. Based on information and belief, DEFENDANTS implemented policies and/or
16 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
17 DEFENDANTS' control during rest periods. For example, based on information and belief,
18 DEFENDANTS required Aggrieved Employees to remain tethered to their immediate work
19 area(s)/site(s) and/or tethered to work communication devices during purported rest periods.

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

23 59. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
24 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
25 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
26 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
27 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
28 shift differential pay, and/or other non-discretionary compensation into the regular rate of

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

2 **60. Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC
3 Wage Orders, including but not limited to Wage Order 4, employees shall be provided with suitable
4 resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be
5 provided in an area separate from the toilet rooms and shall be available to employees during work
6 hours.”

7 **61. DEFENDANTS’ locations/facilities/clinics** are generally similar in layout and
8 design, and there was, and continues to be, space that allows for a resting facility that employees
9 may use to cease work and recover during meal or rest periods. DEFENDANTS could have provided
10 Aggrieved Employees with a resting facility within DEFENDANTS’ facilities/locations with
11 reasonable or no modification, but instead denied and continues to deny, employees with suitable
12 areas to rest (e.g. a breakroom). As a result, Aggrieved Employees were forced to adjust to areas not
13 conducive to resting, including but not limited to leaning up against the wall, or search for facilities
14 outside of DEFENDANTS’ premises which are not designated or reserved for their rest, such as
15 their personal vehicles.

16 **62. DEFENDANTS** did not provide Aggrieved Employees with suitable resting facilities
17 during their hours of work, particularly during meal and/or rest periods.

18 **63. DEFENDANTS’ failure to provide suitable resting facilities to Aggrieved**
19 Employees violated and continue to violate the applicable Wage Order, section 13(B) and the
20 California Labor Code, including but not limited to section 1198.

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

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

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

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

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

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

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

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

28 72. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from

1 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
2 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
3 from Aggrieved Employees paychecks during the relevant period, including but not limited to
4 deducting costs of uniforms and/or other business costs and/or deducting wages for purported
5 overpayments from previous pay periods and/or unlawfully deducting wages for negligently
6 damaged property and/or deducting costs advanced by DEFENDANTS from Aggrieved
7 Employees’ final paychecks. Such a practice is in violation of including but not limited to, Labor
8 Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section
9 2699.

10 73. **Failure to Produce Employment Records.** Based on information and belief,
11 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
12 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code
13 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
14 counsel, sent written request(s) for time, pay and personnel records to DEFENDANTS, on or
15 around, including but not limited to, January 12, 2023. Yet, DEFENDANTS failed to produce
16 complete records, including but not limited to, wage statements and time records, within the time
17 periods delineated by California labor law. Based on information and belief, DEFENDANTS failed
18 and continues to fail to timely produce complete payroll and personnel records when requested by
19 other Aggrieved Employees. Based on information and belief, DEFENDANTS failed and continue
20 to fail to timely produce complete time, pay, and personnel records when requested by other
21 Aggrieved Employees.

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

1 statements.

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

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

14 77. Based on information and belief, DEFENDANTS shifted the costs of doing business
15 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
16 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
17 including but not limited to including but not limited to, uniforms/work clothing/work shoes,
18 personal protective/safety gear and/or the use of Aggrieved Employees' personal mobile phone, cost
19 of internet and/or data plan usage for work related purposes including but not limited to receiving
20 and responding to work related messages and/or phone calls. For example, based on information
21 and belief, Aggrieved Employees received calls/messages to their personal cell phones/mobile
22 devices from supervisors and/or other employees regarding scheduling and/or other work tasks but
23 were not provided any and/or full reimbursement from DEFENDANTS for this personal cell phone
24 use.

25 78. Based on information and belief, DEFENDANTS required Aggrieved Employees to
26 use their personal vehicles for work without reimbursing Aggrieved Employees as required under
27 California law for the vehicle expenses they incurred in connection therewith. For example, based
28 on information and belief, DEFENDANTS failed to reimburse Aggrieved Employees for the costs

1 associated with travelling between DEFENDANTS's various facilities/locations when they were
2 required to use their personal vehicles to drive between DEFENDANTS's facilities/locations and/or
3 use their personal vehicles for other business purposes.

4 79. Based on information and belief, DEFENDANTS failed to reimburse Aggrieved
5 Employees for vehicle-related expenses, including but not limited to, reimbursement for mileage,
6 wear and tear on the vehicle and cost of fuel. Based on information and belief, DEFENDANTS
7 required Aggrieved Employees to use their personal vehicles for work purposes but failed to
8 reimburse Aggrieved Employees at the applicable legally mandated Internal Revenue Service (IRS)
9 per mile compensation rate(s) in effect during the relevant period.

10 80. Based on information and belief, DEFENDANTS required Aggrieved Employees to
11 pay for the purchase and/or maintenance of uniforms/work clothing/protective/safety gear (e.g.,
12 scrubs, face masks and/or gloves) and/or pay for the purchase of continued education
13 trainings/certification courses. Based on information and belief, at times DEFENDANTS required
14 Aggrieved Employees to pay for the purchase and/or maintenance of uniforms/work
15 clothing/protective/safety gear (e.g., scrubs, face masks and/or gloves) and/or purchase, repair
16 and/or maintenance of hand tools Aggrieved Employees required to carry out their assigned job
17 duties.

18 81. Based on information and belief, Aggrieved Employees were not reimbursed for the
19 cost of using their personal vehicles, personal phone/mobile devices/personal computers/internet for
20 work related purposes and/or the cost of purchasing and/or maintaining work uniforms/work
21 clothing/work shoes, personal protective/safety gear. Based on information and belief, Aggrieved
22 Employees were not reimbursed for the cost of using their personal vehicles, personal phone/mobile
23 devices/personal computers/internet for work related purposes and/or the cost of purchasing and/or
24 maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

25 82. Based on information and belief, DEFENDANTS regularly failed to reimburse and
26 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
27 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
28 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties

1 assigned by DEFENDANTS.

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

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

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

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

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

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

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

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

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

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

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

28 92. Suitable seating is one of the worker protections covered by California's Wage

1 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
2 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
3 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

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

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

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

22 97. Upon separation of employment, Aggrieved Employees' final paychecks were not
23 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
24 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
25 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
26 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
27 accrued rates. For example, on or around November 11, 2022, PLAINTIFF resigned from her
28 employment with DEFENDANTS, yet DEFENDANTS have not furnished PLAINTIFF with her

1 final paycheck containing all owed wages.

2 **Unlawful Inquiries into Salary History**

3 98. Labor code section 432.3 provides in part “(b) An employer shall not, orally or in
4 writing, personally or through an agent, seek salary history information, including compensation
5 and benefits, about an applicant for employment.” Based on information and belief, DEFENDANTS
6 have a policy and/or practice of unlawfully asking Aggrieved Employees to reveal their salary
7 history when applying for employment with DEFENDANTS. For example, based on information
8 and belief, when Aggrieved Employees applied for employment, DEFENDANTS required them to
9 fill out an application that requested, among other things, the following information: Name and
10 address of former employer, length of former employment relationship, and the “start” and “final”
11 “wages” of the former employment relationship. Based on information and belief, DEFENDANTS
12 required other Aggrieved Employees to disclose the same or similar information, in violation of
13 Labor Code section 432.3.

14 99. Moreover, by requiring Aggrieved Employees to disclose prior salary information in
15 a written application for employment, DEFENDANTS violated Labor Code section 432.5 by
16 requiring Aggrieved Employees to agree in writing to disclose their salary history as a condition of
17 obtaining employment with DEFENDANTS, in violation of California law.

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

19 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

26 102. Based on information and belief, DEFENDANTS ordered unlawful financial credit
27 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
28 Employees to provide ongoing written consent to the unlawful credit checks as a condition of

1 employment, in violation of California and Federal law, which results in a further violation of Labor
2 Code section 432.5.

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

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

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

25 106. Based on further information and belief, DEFENDANTS also required Aggrieved
26 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
27 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
28 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by

1 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

2 107. Based on further information and belief, DEFENDANTS knew that requiring
3 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
4 condition of obtaining and/or holding employment was unlawful.

5 108. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
6 condition of employment, DEFENDANTS violated Labor Code section 432.5.

7 Unlawful Inquires into Criminal History

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

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

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

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

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

26 112. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

27 **Failure to Keep Accurate Records**

28 113. California Labor Code § 1174 requires employers to keep “accurate and complete”
payroll records showing, among other things, the hours worked daily by all non-exempt employees.
All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the

1 times during which all owed meal periods were provided each day.

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

7 115. DEFENDANTS' failure to keep "accurate and complete" payroll records for
8 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
9 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
10 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
11 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
12 period during which the referenced statutes and Wage Order provisions were violated.²

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

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

20 117. Section (b) of Labor Code section 226 further requires employers to "afford current
21 and former employees the right to inspect or receive a copy of records pertaining to their
22 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
23 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
24 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with

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 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
2 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
3 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
4 the employer. Lab. Code section 226(f).

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

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

18 **Meal Period Violations**

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

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

27 122. Employers covered by any and all applicable IWC Wage Orders have an obligation
28 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),

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

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

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

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

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

26 127. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
27 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
28 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in

1 violation of California's meal period laws.

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

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

12 **Rest Period Violations**

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

27 131. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
28 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards

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

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

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

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

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

28 136. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and

1 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
2 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

3 **Failure to Provide Suitable Resting Facilities**

4 137. Per section 13 of all applicable IWC Wage Orders, including but not limited to Wage
5 Order 4, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage
6 Orders provides: “Suitable resting facilities shall be provided in an area separate from the toilet
7 rooms and shall be available to employees during work hours.”

8 138. DEFENDANTS’ locations/facilities are generally similar in layout and design, and
9 there was, and continues to be, space that allows for a resting facility that employees may use to
10 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
11 Employees with a resting facility within DEFENDANTS’ facilities/locations with reasonable or no
12 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a
13 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to
14 resting, including but not limited to leaning up against the wall, or search for facilities outside of
15 DEFENDANTS’ premises which are not designated or reserved for their rest, such as their personal
16 vehicles.

17 139. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities
18 during their hours of work, particularly during meal and/or rest periods.

19 140. DEFENDANTS’ failure to provide suitable resting facilities to Aggrieved
20 Employees violated and continue to violate the applicable Wage Order, section 13(B) and the
21 California Labor Code, including but not limited to section 1198.

22 **Minimum and Overtime Wage Violations**

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

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

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

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

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

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

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

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

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

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

10 **Statutory Wage Violations**

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

22 **Refusal to Make Payment**

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

1 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
2 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

3 **Standard Conditions of Labor Violations**

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

12 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

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

26 **Wage Statement Violations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 173. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
8 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
9 during which the statute provisions were violated. ⁴

10 **Unlawful Deductions**

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

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

23 **Seating Violations**

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

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

28 ⁴ Labor Code § 226.3 (establishing that the civil penalty is “per employee per violation”).

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

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

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

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

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

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

26 **Sick Leave Violations**

27 182. DEFENDANTS violated California's paid sick leave laws including, Labor Code
28 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to

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

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

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

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

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

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

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

27 189. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
28 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and

1 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

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

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

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

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

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

22 **Untimely Payment of Final Wages**

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

1 to his or her wages at the time of quitting.”

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

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

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

17 **Unlawful Inquiries into Salary History**

18 197. Labor code section 432.3 provides in part “(b) An employer shall not, orally or in
19 writing, personally or through an agent, seek salary history information, including compensation
20 and benefits, about an applicant for employment.” Based on information and belief, DEFENDANTS
21 have a policy and/or practice of unlawfully asking Aggrieved Employees to reveal their salary
22 history when applying for employment with DEFENDANTS. For example, based on information
23 and belief when Aggrieved Employees applied for employment, DEFENDANTS required them to
24 fill out an application that requested, among other things, the hourly rate and/or salary of the former
25 employment relationship in violation of Labor Code section 432.3.

26 198. Moreover, by requiring Aggrieved Employees to disclose prior salary information in
27 a written application for employment, DEFENDANTS violated Labor Code section 432.5 by
28 requiring Aggrieved Employees to agree in writing to disclose their salary history as a condition of

1 obtaining employment with DEFENDANTS, in violation of California law.

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

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

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

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

27 202. Based on information and belief, DEFENDANTS required Aggrieved Employees to
28 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of

1 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

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

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

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

12 Unlawful Inquires into Criminal History

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

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

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

27 209. Under the provisions of PAGA and the above mentioned Labor Code sections,
28 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,

1 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
2 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
3 interpretations of these laws by California Courts and administrative bodies, as well as any other
4 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

PRAYER FOR RELIEF

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

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

Dated: August 17, 2023

CROSNER LEGAL, PC

By: 
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Brandon Brouillette, Esq.
Attorneys for Plaintiff