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11 As an individual, and on behalf of the State of California,

12 and others similarly situated and aggrieved

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JUAN CARLOS BARAHONA MURILLO,
as an individual, and on behalf of the State of
California, and others similarly situated and
aggrieved,

Plaintiff,

v.

APERTO PROPERTY MANAGEMENT,
INC., a California Corporation; and DOES
1-100, inclusive,

Defendants.

Case No.: 30-2023-01327244-CU-OE-CXC

Judge Randall J. Sherman

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

1 Plaintiff, JUAN CARLOS BARAHONA MURILLO, (“PLAINTIFF”), an individual on
2 behalf of PLAINTIFF, the State of California, and all other Aggrieved Employees (as defined
3 below), hereby files this Complaint against Defendants APERTO PROPERTY MANAGEMENT,
4 INC., a California Corporation; and DOES 1-100, inclusive, (collectively referred to herein as
5 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

21 **THE PARTIES**

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

24 5. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
25 PLAINTIFF worked for DEFENDANTS as a maintenance technician and/or similar title(s) from in
26 or around July 2021 through on or around September 20, 2022. DEFENDANTS regularly assigned
27 PLAINTIFF to work out of DEFENDANTS’ location, property, facility and/or community
28 operating under the name “Woodglen Apartments” and/or “Woodglen Apartment Homes,” located

1 in West Covina, California. PLAINTIFF regularly worked at least nine (9) hours per day, at least
2 five (5) days per week.

3
4 6. Defendant APERTO PROPERTY MANAGEMENT, INC., is a California
5 Corporation that, at all relevant times, was authorized to do business within the State of California
6 and is doing business in the State of California.

7 7. DEFENDANTS own, operate, and/or manage a property management company
8 specializing in the management of residential communities and/or properties. DEFENDANTS owns
9 operates and/or otherwise manages at least 170 locations, properties, facilities and/or communities
10 in California, including but not limited to, DEFENDANTS' location, property, facility and/or
11 community operating under the name "Woodglen Apartments" and/or "Woodglen Apartment
12 Homes," located in West Covina, California, where DEFENDANTS regularly assigned
13 PLAINTIFF to work during the relevant period.

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

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

1 controlled, aided and abetted the conduct of all other Defendants.

2 **JOINT LIABILITY**

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

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

27 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
28 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized

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

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

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

1 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
2 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
3 collectively would evaluate their wage rates.

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

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

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

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

21 **PAGA ALLEGATIONS**

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

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

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

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

13 21. PLAINTIFF, on March 16, 2023, through counsel, gave written notice by online
14 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
15 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
16 in this Complaint (“PAGA Notice”).

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

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

23 **FACTUAL ALLEGATIONS**

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

28 25. PLAINTIFF employed by DEFENDANTS as a non-exempt employee. PLAINTIFF

1 worked for DEFENDANTS as a maintenance technician and/or similar title(s) from in or around
2 July 2021 through on or around September 20, 2022. DEFENDANTS regularly assigned
3 PLAINTIFF to work out of DEFENDANTS' location, property, facility and/or community
4 operating under the name "Woodglen Apartments" and/or "Woodglen Apartment Homes," located
5 in West Covina, California. PLAINTIFF regularly worked at least nine (9) hours per day, at least
6 five (5) days per week.

7 26. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
8 DEFENDANTS as hours worked.

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

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

18 29. Based on information and belief, DEFENDANTS implemented a policy and/or
19 practice of rounding meal period start and end times and/or automatically deducting at least thirty
20 minutes (and sometimes 60 minutes) per shift for meal periods, despite having actual and/or
21 constructive knowledge that PLAINTIFF and other Aggrieved Employees were subject to
22 DEFENDANTS' control during purported meal periods and/or were otherwise not afforded lawful
23 meal periods, depriving PLAINTIFF and Aggrieved Employees of all wages owed.

24 30. Based on information and belief, Aggrieved Employees were not paid for all hours
25 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
26 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
27 the clock work policies and/or practices. For example, as explained herein, PLAINTIFF was
28 consistently forced to cut any meal breaks short and/or work through his unpaid meal periods

1 completely due to the nature of his work and/or lack of relief workers available to perform work
2 tasks that had to be done immediately, the need to address property maintenance situations/fill
3 maintenance orders, respond to tenant/resident inquiries/concerns and/or other work
4 communications and/or complete other work tasks, resulting in DEFENDANTS' failure to
5 compensate PLAINTIFF for all hours worked and the underpayment of minimum wages owed to
6 PLAINTIFF.

7 31. Also, DEFENDANTS required PLAINTIFF to monitor his phone for work
8 communications at all times during his shifts, including during unpaid meal periods, and any meal
9 periods were typically interrupted due to the need to respond to work-related phone calls/messages
10 and/or complete other work tasks. As such, PLAINTIFF was not relieved of all duties and
11 DEFENDANTS' control during unpaid meal periods resulting in the failure to compensate
12 PLAINTIFF for all hours worked and the underpayment of minimum wages owed to PLAINTIFF.

13 32. Moreover, based on information and belief, DEFENDANTS failed to compensate
14 Aggrieved Employees for additional time spent performing pre-shift and/or post-shift off-the-clock
15 work/work outside of their scheduled shifts. Based on information and belief, Aggrieved Employees
16 were not compensated all owed minimum and overtime wages for all time spent performing work
17 duties outside of their scheduled shift and/or time spent on call. For example, PLAINTIFF was
18 required to monitor his work phone at all times during his shifts as well as outside of his scheduled
19 shifts, including but not limited to, on purported days off and/or on what were supposed to be
20 vacation days/days off. PLAINTIFF would regularly have to attend to emergency situations on
21 DEFENDANTS' premises and/or fill maintenance requests and/or assist tenants and/or perform
22 other work tasks after hours/outside of his scheduled shift times without being compensated for all
23 on-call time/time spent performing work duties outside of his scheduled shift times. For example,
24 at times, PLAINTIFF spent at least several hours per day performing work tasks after hours/outside
25 of his scheduled shift times but was not compensated for all said time performing work tasks after
26 hours/outside of his scheduled shift times, resulting in consistent off-the-clock work and the
27 underpayment of minimum wages owed to PLAINTIFF.

28 33. Based on information and belief, DEFENDANTS failed to pay Aggrieved

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

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

9 35. Based on information and belief, at times, some Aggrieved Employees, including but
10 not limited to those working as property managers, onsite property managers, community managers
11 and/or similar title(s) were misclassified by DEFENDANTS as exempt and compensated on a salary
12 basis when they were in fact non-exempt employees. Based on information and belief, at times,
13 DEFENDANTS misclassified some Aggrieved Employees as exempt employees to try to evade
14 California wage and hour laws including but not limited to, payment of minimum and overtime
15 wages and provision of meal and rest periods even though misclassified Aggrieved Employees did
16 not satisfy any test for exemption under California law. For example, based on information and
17 belief, those misclassified Aggrieved Employees did not regularly exercise discretion/independent
18 judgment in their jobs and typically spent more than fifty percent of their workday performing non-
19 exempt duties such as, but not limited to, answering phone calls, scheduling workers, collecting
20 signatures on documents/clerical/ministerial duties, and/or other non-discretionary duties not
21 requiring the exercise of independent judgment to perform.

22 36. Based on further information and belief, Aggrieved Employees that were
23 misclassified were not compensated with a monthly salary (exclusive of the value of any lodging)
24 that equated to twice the California minimum wage rate. See, Labor Code section 515 and Cal.
25 Code of Regs., tit. 8, § 11040 [providing that, for each exempted category, the employee must earn
26 “a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time
27 employment”].

28 37. Based on information and belief, Aggrieved Employees that were paid on a salary

1 basis and/or otherwise misclassified as exempt were denied all owed minimum wages due to
2 DEFENDANTS' misclassification scheme.

3 38. Violation of IWC Wage Order Section 10:

4 39. Section 10 of all applicable IWC Wage Orders states that "lodging may not be
5 credited against the minimum wage without a voluntary written agreement between the employer
6 and the employee." Case law indicates that the agreement must state that the employer will credit
7 lodging against the employee's wages. See, *Von Nothdurft v. Steck* (2014) 227 Cal.App.4th 524
8 (2014) (the employer and the employee "must voluntarily agree to credit lodging against the
9 employee's wages.") Assuming the existence of such a voluntary written agreement, Section 10 of
10 IWC Wage Order 5-2001 (and all applicable IWC Wage Orders) sets forth the maximum amounts
11 that can be credited for lodging against the minimum wage.

12 40. Based on information and belief, DEFENDANTS had and has a policy and practice
13 of unlawfully crediting lodging against the minimum wages owed to Aggrieved Employees,
14 resulting in the underpayment of minimum wages owed to Aggrieved Employees. For example,
15 based on information and belief, DEFENDANTS credits lodging towards its minimum wage
16 obligations to Aggrieved Employees that exceeds the maximum allowable rental credit under
17 California law and/or DEFENDANTS fail to execute voluntary written agreement(s) to credit
18 lodging against its minimum wage obligations due to, including but not limited to, failure to
19 explicitly state that the rental credit is being applied towards the employer's minimum wage
20 obligations and/or failure to execute any voluntary written agreement, as required under California
21 law. See Section 10 of IWC Wage Order Section 5-2001 (and all applicable IWC Wage Orders).

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

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

1 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
2 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
3 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation
4 of California's minimum and overtime wage laws.

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

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

14 45. Based on information and belief, Aggrieved Employees that were paid on a salary
15 basis and/or otherwise misclassified as exempt were denied all owed overtime wages due to
16 DEFENDANTS' misclassification scheme.

17 46. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
18 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
19 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
20 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
21 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
22 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
23 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
24 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
25 completely. For example, PLAINTIFF was consistently forced to cut any meal breaks short and/or
26 work through his owed meal periods completely due to the nature of his work and/or lack of relief
27 workers available to perform work tasks that had to be done immediately, the need to address
28 property maintenance situations/fill maintenance orders, respond to tenant/resident

1 inquiries/concerns and/or other work communications and/or complete other work tasks.

2 47. Also, PLAINTIFF was consistently forced to take any meal periods late (i.e. after
3 working more than five (5) hours). For example, DEFENDANTS' time records for PLAINTIFF
4 show a clock out for meal period(s) past the fifth hour of work. Further, DEFENDANTS required
5 PLAINTIFF to monitor his phone for work communications at all times during his shifts, including
6 during unpaid meal periods, and any meal periods were typically interrupted due to the need to
7 respond to work-related phone calls/messages and/or complete other work tasks. Based on
8 information and belief, at times, DEFENDANTS adjusted, rounded, doctored, and/or manipulated
9 PLAINTIFF's time records and/or PLAINTIFF's reported time to make it appear as though
10 PLAINTIFF took an off-duty meal period lasting at least thirty-minutes (typically at least sixty
11 minutes) before the end of the fifth hour of work, on most if not all shifts he worked, when in fact,
12 PLAINTIFF, rarely, if ever, received a timely, full uninterrupted thirty-minute, off-duty meal period
13 during the relevant period.

14 48. Moreover, DEFENDANTS required PLAINTIFF to monitor his work phone for
15 work communications at all times during his shifts, including during unpaid meal periods. Based
16 on information and belief, other Aggrieved Employees were also required to monitor work
17 communication devices and/or remain tethered to their worksites during unpaid meal periods. As
18 such, Aggrieved Employees were not relieved of all duties and DEFENDANTS' control during
19 unpaid meal periods, resulting in meal period violations and off-the-clock work.

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

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

28 51. Based on information and belief, DEFENDANTS required Aggrieved Employees to

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

4 52. Based on information and belief, despite DEFENDANTS' failure to provide lawful
5 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
6 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
7 deducting at least thirty minutes (and sometimes 60 minutes) per shift for missed, on-duty, and/or
8 otherwise unlawful meal periods despite having actual and/or constructive knowledge that
9 PLAINTIFF and other Aggrieved Employees did not receive lawful meal periods.

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

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

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

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

26 57. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
27 additional hour of wages at their respective regular rates of compensation for each workday a lawful
28 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for

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

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

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

13 **60.** Based on information and belief, DEFENDANTS did not have a have a compliant
14 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
15 practice. For example, PLAINTIFF was consistently forced to cut any rest breaks short and/or work
16 through his owed rest periods completely due to the nature of his work and/or lack of relief workers
17 available to perform work tasks that had to be done immediately, the need to address property
18 maintenance situations/fill maintenance orders, respond to tenant/resident inquiries/concerns and/or
19 other work communications and/or complete other work tasks. In fact, PLAINTIFF rarely, if ever,
20 received a full ten-minute off-duty rest period during the relevant period.

21 **61.** Moreover, on information and belief, DEFENDANTS failed to authorize and permit
22 rest periods that were a “net” ten minutes in a suitable rest area and instead, to the extent rest periods
23 were provided at all, limited Aggrieved Employees to only ten-minute rest periods, requiring them
24 to be back at their workstations within ten minutes of leaving, in violation of California rest period
25 law. DEFENDANTS' failure to communicate that the rest period is a net ten minutes deprived
26 Aggrieved Employees of their rights to a full rest period, as such as policy only relieves Aggrieved
27 Employees from their workstation for ten minutes to travel to and from a rest area and be back at
28 the workstation by the end of that ten minutes.

1 62. Moreover, DEFENDANTS required PLAINTIFF to monitor his work phone for
2 work communications at all times during his shifts, including during any purported rest periods.
3 Based on information and belief, other Aggrieved Employees were also required to monitor work
4 communication devices and/or remain tethered to their worksites during any purported rest periods.
5 As such, Aggrieved Employees were not relieved of all duties and DEFENDANTS' control during
6 any rest periods, in violation of California's rest period law,

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

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

13 65. Based on information and belief, DEFENDANTS implemented policies and/or
14 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
15 DEFENDANTS' control during rest periods.

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

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

26 68. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
27 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
28 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved

1 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
2 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
3 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
4 applicable hourly rates in effect during the pay period and the corresponding number of hours
5 worked at each hourly rate by the employee.

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

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

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

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

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

27 74. Based on further information and belief, DEFENDANTS issued wage statements to
28 Aggrieved Employees that failed to list the accurate total hours worked whenever shift differential

1 wages were paid in violation of Labor Code section 226.

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

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

15 77. **Failure to Produce Employment Records.** Based on information and belief,
16 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
17 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code
18 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF sent a
19 written request for payroll and personnel records to DEFENDANTS. Yet, DEFENDANTS failed to
20 timely produce complete records within the time periods delineated by California labor law. Based
21 on information and belief, DEFENDANTS failed and continues to fail to timely produce complete
22 payroll and personnel records when requested by other Aggrieved Employees. Based on information
23 and belief, DEFENDANTS failed and continue to fail to timely produce complete time, pay, and
24 personnel records when requested by other Aggrieved Employees.

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

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

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

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

17 81. Based on information and belief, DEFENDANTS shifted the costs of doing business
18 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
19 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
20 including but not limited to including but not limited to, use of Aggrieved Employees' personal
21 mobile phones/mobile devices/internet/data plan charges and costs associated with the purchase
22 and/or maintenance of work uniforms/work clothing and shoes and/or safety/protective gear. For
23 example, based on information and belief, Aggrieved Employees received work-related calls and/or
24 messages to their personal phones from managers and/or supervisors, including but not limited to,
25 regarding scheduling/other work tasks but were not reimbursed by DEFENDANTS for these
26 business expenses as required under California Law.

27 82. Also, DEFENDANTS did not reimburse Aggrieved Employees for the costs they
28 incurred in having to purchase/maintain their own work tools, including but not limited to, hand

1 tools, power tools and/or equipment, cleaning tools/supplies and/or maintenance tools/supplies they
2 required to perform their assigned job duties. For example, PLAINTIFF was required to supply
3 most if not all of the tools required to perform his assigned job duties without receiving any/full
4 reimbursement from DEFENDANTS for the costs he incurred in connection with having to
5 purchase, repair and/or maintain the personal tools and/or equipment DEFENDANTS required he
6 use to perform his job duties. Based on information and belief, DEFENDANTS did not reimburse
7 Aggrieved Employees for all cell phone/mobile device, data plan charges incurred in the
8 performance of their job duties.

9 83. Based on further information and belief, Aggrieved Employees incurred expenses
10 associated with being required to use their personal vehicles for work without receiving full
11 reimbursement from DEFENDANTS for the costs they incurred in connection therewith. For
12 example, based on information and belief, DEFENDANTS required Aggrieved Employees to drive
13 their personal vehicles between DEFENDANTS' various locations/complexes and/or for other
14 work-related purposes without reimbursing Aggrieved Employees for all vehicle-related expenses
15 they incurred as a direct consequence thereof, including but not limited to, gas, mileage, and vehicle
16 wear and tear. Based on information and belief, at times, DEFENDANTS purported to compensate
17 Aggrieved Employees for vehicle-related expenses, but any amount offered fell far below the
18 Internal Revenue Service (IRS) mandated per mile compensation for the relevant time period and/or
19 otherwise failed to compensate Aggrieved Employees for all reasonable vehicle-related expenses
20 they were required to incur in performing their jobs.

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

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

1 2802.

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

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

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

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

1 wages.

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

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

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

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

23 94. Upon separation of employment, Aggrieved Employees' final paychecks were not
24 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
25 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
26 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
27 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
28 accrued rates.

1 95. Based on further information and belief, DEFENDANTS failed to timely provide all
2 owed wages immediately upon discharge of employment. Based in information and belief, at times,
3 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
4 Aggrieved Employees would not be called in for work for longer than a single pay period due to
5 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
6 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
7 the end of such periods of employment, in violation of including but not limited to Labor Code
8 section 201-202.

9 96. **Violation of Labor Code Section 970.** Based on information and belief,
10 DEFENDANTS have a policy and/or practice of knowingly making false representations to
11 Aggrieved Employees regarding obtaining/continued employment, the nature of work to be
12 performed and/or the terms of their compensation to influence, persuade or engage its employees to
13 relocate/move for purposes of employment, in violation of Labor Code section 970.

14 97. **Unlawful Agreements-Unlawful Criminal History Inquiries.**
15 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

26 100. Based on information and belief, DEFENDANTS also required Aggrieved
27 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
28 a condition of obtaining and/or holding employment in violation of the Investigative Consumer

1 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
2 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
3 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
4 FCRA when conducting background screenings for applicants, including but not limited to
5 Aggrieved Employees that were subject to a background check as a condition of employment during
6 the application phase.

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

17 102. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
18 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
19 section 432.5.

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

25 104. Based on further information and belief, DEFENDANTS knew that requiring
26 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
27 condition of obtaining and/or holding employment was unlawful.

28 105. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a

1 condition of employment, DEFENDANTS violated Labor Code section 432.5.

2 Unlawful Inquires into Criminal History

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

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

12 108. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
13 engaged in these same herein described unlawful practices, which led to violations of the California
14 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
15 unlawful practices to all of its employees that it applied to PLAINTIFF.

16
17 **FIRST CAUSE OF ACTION**
18 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
19 **2698, *ET SEQ.***
20 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
21 **Defendants)**

22 109. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

23 **Failure to Keep Accurate Records**

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

28 111. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
and complete records as required by law, including but not limited to the following records: total
daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other

1 Aggrieved Employees began and ended each work period, time records of meal periods, and
2 accurate itemized wage statements.

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

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

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

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

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

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

10 116. Based on information and belief, DEFENDANTS fail to timely produce or make
11 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant
12 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
13 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

14 **Meal Period Violations**

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

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

23 119. Employers covered by any and all applicable IWC Wage Orders have an obligation
24 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
25 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
26 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
27 ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
28 section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a

1 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
2 provided”).

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

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

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

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

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

26 125. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
27 periods in violation of California law and/or failed to pay the proper meal period premium for failure
28 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift

1 differential pay and/or other non-discretionary compensation into the regular rate or compensation
2 for purposes of calculating the owed meal period premium.

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

8 **Rest Period Violations**

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

23 128. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
24 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
25 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
26 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
27 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
28 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what

1 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
2 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
3 “onus is on the employer to clearly communicate the authorization and permission [to take rest
4 periods] to its employees.”).

5 129. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
6 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
7 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
8 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
9 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
10 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

27 **Minimum and Overtime Wage Violations**

28 134. California law provides that employees in California must be paid for all hours

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

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

13 136. As explained above, DEFENDANTS violated California's minimum and overtime
14 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
15 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
16 start and end times and meal period start and end times), payment according to scheduled hours
17 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during
18 meal periods, and/or other otherwise off-the-clock work (described above), misclassification of
19 some Aggrieved Employees as exempt, DEFENDANTS' policy and/or practice of unlawfully
20 crediting lodging against minimum wages, and/or other unlawful policies and/or practices described
21 above which resulted in unpaid minimum and overtime wages.

22 137. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
23 Aggrieved Employees for all hours worked.

24 138. Based on information and belief, DEFENDANTS had actual or constructive
25 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
26 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and
27 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
28 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved

1 Employees.

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

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

13 141. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
14 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
15 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
16 Wage Orders, section 20.

17 **Statutory Wage Violations**

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

1 **Refusal to Make Payment**

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

10 **Standard Conditions of Labor Violations**

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

19 **Business Expense Violations**

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

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

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

9 147. Further, "any contract or agreement, express or implied, made by any employee to
10 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
11 any employee or his personal representative of any right or remedy to which he is entitled to under
12 the laws of this State." *See* Cal. Lab. Code section 2804.

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

15 149. 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.

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

22 151. DEFENDANTS' failure to provide PLAINTIFF and the Aggrieved Employees with
23 full reimbursement for all reasonable expenses associated with carrying out their duties required
24 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
25 expenses in violation of Labor Code section 2802.

26 152. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
27 Employees have suffered injury in that they were not completely reimbursed as mandated by
28 California law.

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

5 **Wage Statement Violations**

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

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

23 156. Moreover, due to violations detailed above, including but not limited to,
24 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
25 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
26 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
27 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
28 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based

1 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
2 compensation earned during the pay period into the regular rate of pay for purposes of calculating
3 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
4 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

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

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

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

28 163. Moreover, as a result of DEFENDANTS’ failure to list the correct name and/or

1 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered
2 injury as they could not contact their employer regarding any question(s) they had about wages paid.

3 164. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
4 Aggrieved Employees with accurate, itemized wage statements.

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

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

17 **Unlawful Deductions**

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

24 168. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
25 each pay period during which the statute provisions were violated. See Lab. Code §225.5
26 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
27 provided in this article, every person who unlawfully withholds wages due any employee in

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

1 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
2 to pay each employee”).

3 **Sick Leave Violations**

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

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

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

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

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

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

2 175. On information and belief, PLAINTIFF alleges that all of these practices were
3 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

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

27 **Untimely Payment of Final Wages**

28 180. California Labor Code section 201(a) provides, in relevant part, that “[i]f an

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

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

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

19 183. Based on further information and belief, DEFENDANTS failed to timely provide all
20 owed wages immediately upon discharge of employment. Based in information and belief, at times,
21 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
22 Aggrieved Employees would not be called in for work for longer than a single pay period due to
23 including but not limited to DEFENDANTS’ lack of work or lack of assignments. Such instances
24 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
25 the end of such periods of employment, in violation of including but not limited to Labor Code
26 section 201-202.

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

1 256.

2 **Violation of Labor Code Section 970**

3 185. Labor Code section 970 prohibits an employer from knowingly making false
4 representations about the nature or existence of work, continued employment and/or compensation
5 to induce an employee to move/relocate in reliance thereon. Specifically, Labor Code section 970
6 provides:

7 No person, or agent or officer thereof, directly or indirectly, shall
8 influence, persuade, or engage any person to change from one place
9 to another in this State or from any place outside to any place within
10 the State, or from any place within the State to any place outside, for
11 the purpose of working in any branch of labor, through or by means
12 of knowingly false representations, whether spoken, written, or
13 advertised in printed form, concerning either:

14 (a) The kind, character, or existence of such work;

15 (b) The length of time such work will last, or the compensation
16 therefor...

17 186. Based on information and belief, DEFENDANTS have a policy and/or practice of
18 knowingly making false representations to Aggrieved Employees regarding obtaining/continued
19 employment, the nature of work to be performed and/or the terms of their compensation to influence,
20 persuade or engage its employees to relocate/move for purposes of employment, in violation of
21 Labor Code section 970.

22 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

23 187. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
24 require any employee or applicant for employment to agree, in writing, to any term or condition
25 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
26 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
27 conditions of employment including but not limited to, unlawful non-solicitation/non-compete
28 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or

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

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

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

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

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

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

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

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

4 Unlawful Inquires into Criminal History

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

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

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

19 197. Under the provisions of PAGA and the above mentioned Labor Code sections,
20 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
21 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 515, 558, 558.1, 970, 1174, 1174.5, 1194, 1197,
22 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as
23 all interpretations of these laws by California Courts and administrative bodies, as well as any other
24 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

25 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
26 relevant California Labor Code provisions listed herein only if permitted by the
27 PAGA statute, pursuant to Labor Code section 2699(a); and

28 b. Default PAGA penalties for any violation of the enumerated list of Labor Code

1 violations without a civil penalty recoverable under the PAGA, all in the default
2 amounts provided by Labor Code section 2699(f).

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

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

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PRAYER FOR RELIEF

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

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

Dated: May 23, 2023

CROSNER LEGAL, PC

By: 
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JUAN CARLOS BARAHONA MURILLO