

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

9 Attorneys for Plaintiff CHARLES KEOPIMPHA
10 on behalf of the State of California,
11 and others similarly situated and aggrieved

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**

14 CHARLES KEOPIMPHA, on behalf of the
15 State of California, and others similarly
16 situated and aggrieved,

17 Plaintiff,

18 v.

19 MANPOWER US INC., a Delaware
20 Corporation; MANPOWERGROUP US
21 INC., a Wisconsin Corporation;
22 HONEYWELL INTERNATIONAL, INC., a
23 Delaware Corporation; and DOES 1-100,
24 inclusive,

25 Defendants.

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County of Los Angeles
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Executive Officer/Clerk of Court,
By G. Robinson, Deputy Clerk

Case No.: **23STCV18670**

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

1 Plaintiff, CHARLES KEOPIMPHA (“PLAINTIFF”), an individual on behalf of
2 PLAINTIFF, the State of California, and all other Aggrieved Employees (as defined below), hereby
3 files this Complaint against Defendants MANPOWER US INC., a Delaware Corporation;
4 MANPOWERGROUP US INC., a Wisconsin Corporation; HONEYWELL INTERNATIONAL,
5 INC., a Delaware Corporation; and DOES 1-100, inclusive, (collectively referred to herein as
6 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

7 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF worked for DEFENDANTS in the State of California during the PAGA
26 Period (defined below). PLAINTIFF worked for DEFENDANTS as a non-exempt employee from
27 in or around July 2022 through in or around October 2022 when PLAINTIFF went on leave.

28 6. PLAINTIFF worked for DEFENDANTS in Torrance, California. PLAINTIFF was

1 hired by Defendants MANPOWER US INC., and MANPOWERGROUP US INC., and was
2 assigned to work at Defendant HONEYWELL INTERNATIONAL, INC.'s facility in Torrance,
3 California. PLAINTIFF worked at the disassembly department at HONEYWELL
4 INTERNATIONAL, INC.'s aerospace facility and/or department.

5 7. Defendant MANPOWER US INC., is a Delaware Corporation that at all relevant
6 times, was authorized to do business within the State of California and is doing business in the State
7 of California.

8 8. Defendant MANPOWERGROUP US INC., is a Wisconsin Corporation that at all
9 relevant times, was authorized to do business within the State of California and are doing business
10 in the State of California.

11 9. Defendant HONEYWELL INTERNATIONAL, INC., is a Delaware Corporation
12 that at all relevant times, was authorized to do business within the State of California and are doing
13 business in the State of California.

14 10. Defendants MANPOWER US INC and MANPOWERGROUP US INC., are staffing
15 agencies that place workers and/or assign workers to work in various industries and with various
16 companies including but not limited to individuals assigned/staffed to work for Defendant
17 HONEYWELL INTERNATIONAL, INC.

18 11. Defendant HONEYWELL INTERNATIONAL, INC., is a company that operates in
19 various industries including but not limited to aerospace, building technologies, performance
20 materials and productivity and safety solutions.

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

27 13. PLAINTIFF is further informed and believes that, at all relevant times, each
28 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,

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

9 **JOINT LIABILITY**

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

27 15. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and other
28 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of

1 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
2 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
3 over wages, hours and working conditions of PLAINTIFF and Aggrieved Employees; (2) suffered
4 or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF
5 and Aggrieved Employees to work for them.

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

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

25 18. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
26 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
27 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
28 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved

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

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

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

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

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

28 **PAGA ALLEGATIONS**

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

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

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

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

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

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

27 27. The LWDA and/or Division of Occupational Safety and Health did not provide
28 notice of its intention to investigate DEFENDANTS’ violations after expiration of the statutorily-

1 mandated waiting-time period(s), or at any time. To the extent any of the alleged violations were
2 curable, DEFENDANTS failed to cure within the time allotted by PAGA. Accordingly, PLAINTIFF
3 has exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently,
4 PLAINTIFF's right to file the instant lawsuit against DEFENDANTS has duly accrued.

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

8 FACTUAL ALLEGATIONS

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

13 30. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
14 PLAINTIFF was hired by Defendants MANPOWER US INC., and MANPOWERGROUP US
15 INC., and was assigned to work at Defendant's HONEYWELL INTERNATIONAL, INC.'s facility
16 in Torrance, California. PLAINTIFF worked at the disassembly department at HONEYWELL
17 INTERNATIONAL, INC.'s aerospace facility and/or department located in Torrance, California.

18 31. PLAINTIFF regularly worked at least eight (8) to eleven (11) hours per day, at least
19 five (5) days per week.

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

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

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

7 35. Based on information and belief, Aggrieved Employees were not paid for all hours
8 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
9 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
10 the clock work policies and/or practices. Based on information and belief, DEFENDANTS required
11 Aggrieved Employees to undergo COVID-19 temperature screenings and/or complete
12 questionnaires prior to beginning their scheduled shift and/or prior to clocking/signing in, thereby,
13 resulting in pre-shift off-the-clock work.

14 36. Based on information and belief, DEFENDANTS required Aggrieved Employees to
15 undergo security screenings before and/or after a scheduled shift and/or before or after clocking
16 in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.

17 37. Based on information and belief, DEFENDANTS required Aggrieved Employees to
18 be at their assigned workstations at the start of a scheduled shift, thereby forcing them to gather
19 work related equipment and/or safety gear prior to their scheduled shift and/or prior to clocking
20 in/signing in, thereby resulting in pre-shift off-the-clock work.

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

26 39. Based in information and belief, DEFENDANTS implemented a time-rounding
27 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
28 compensable time because the time-rounding system implemented by DEFENDANTS would

1 almost always, if not always, result in understating actual compensable work time. For example,
2 DEFENDANTS issued wage statements to PLAINTIFF that show that PLAINTIFF's hours were
3 rounded to the nearest tenth of an hour. For example, DEFENDANTS' payment history for
4 PLAINTIFF show that for the pay dates including but not limited to 2022-10-19; 2022-10-12; 2022-
5 10-05; 2022-09-28; 2022-09-21; 2022-09-14; 2022-09-07; 2022-08-31; 2022-08-24; 2022-08-17;
6 2022-08-10; 2022-08-03 show that PLAINTIFF's hours are rounded to the nearest tenth of an hour.

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

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

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

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

27 44. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
28 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.

1 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
2 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
3 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
4 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
5 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
6 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
7 completely. For example, based on information and belief, PLAINTIFF was forced to take late meal
8 periods in order to complete his assigned job duties. Based on information and belief, PLAINTIFF
9 was a times interrupted during his meal periods and/or had his meal periods cut short and/or
10 restricted to DEFENDANTS' premises due to the need to continue his assigned job duties.

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

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

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

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

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

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

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

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

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

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

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

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

4 56. Based on information and belief, DEFENDANTS did not have a have a compliant
5 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
6 practice. For example, based on information and belief, PLAINTIFF was at times unable to take
7 compliant rest periods due to his need to complete his assigned job duties and/or was unable to take
8 a net ten-minute rest period in a suitable rest area and/or had his purported rest periods restricted to
9 DEFENDANTS' premises.

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

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

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

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

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

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

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

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

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

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

27 67. As such, DEFENDANTS' issued wage statements to Aggrieved Employees that did
28 not include all of the statutorily required information, including but not limited to, the correct name

1 and/or address of the legal entity that is the employer.

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

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

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

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

28 72. **Inaccurate Records.** Based on the above-described unlawful policies and practices,

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

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

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

20 75. Based on information and belief, DEFENDANTS shifted the costs of doing business
21 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
22 information and belief DEFENDANTS required Aggrieved Employees to pay for business
23 expenses including but not limited to, uniforms/work clothing, the use of Aggrieved Employees'
24 personal mobile phone and data usage for work related purposes to receive and respond to work
25 related messages and/or phone calls.

26 76. Moreover, Aggrieved Employees were required to purchase their own safety
27 equipment but were not reimbursed for such costs. For example, PLAINTIFF was required to
28 purchase steel-toed boots but was not reimbursed for such business expense.

1 77. Based on information and belief, DEFENDANTS regularly failed to reimburse and
2 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
3 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
4 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
5 assigned by DEFENDANTS.

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

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

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

27 81. Based on information and belief, throughout the relevant time period,
28 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and

1 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
2 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
3 prior to their respective separations, for as on several occasions thereafter, he or she would have
4 been entitled to use the banked sick leave and earn appropriate compensation.

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

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

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

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

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

26 (A) All working employees shall be provided with suitable seats when the nature of the
27 work reasonably permits the use of seats.
28

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

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

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

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

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

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

27 92. Upon separation of employment, Aggrieved Employees' final paychecks were not
28 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.

1 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
2 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
3 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
4 accrued rates.

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

13 94. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

14 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

25 97. Based on information and belief, DEFENDANTS also required Aggrieved
26 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
27 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
28 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit

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

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

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

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

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

27 102. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
28 condition of employment, DEFENDANTS violated Labor Code section 432.5.

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

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

22
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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1 employee begins and ends each work period (including meal periods) and split intervals; total hours
2 worked by the employee; all deductions; gross wages earned; and net wages earned.

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

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

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

25 **Meal Period Violations**

26 115. California law requires employers to provide employees a duty-free, uninterrupted
27 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and
28 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and

1 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
2 *Court* (2012) 53 Cal.4th 1004.

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

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

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

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

27 120. Based on information and belief, DEFENDANTS had and continue to have a policy
28 of rounding the start and end times of employees’ meal periods and/or automatically deducting thirty

1 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
2 Aggrieved Employees did not receive compliant meal periods.

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

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

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

14 124. These unlawful meal period policies and practices result in violations of Labor Code
15 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
16 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
17 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
18 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

19 **Rest Period Violations**

20 125. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
21 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
22 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
23 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
24 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
25 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
26 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
27 1029). The rest period requirement obligates employers to permit and authorize employees to take
28 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control

1 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
2 257. If the employer fails to provide any required rest period, the employer must pay the employee
3 one hour of pay at the employee's regular rate of compensation for each workday the employer did
4 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
5 applicable IWC Wage Order, §12(B).

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

16 127. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
17 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
18 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
19 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
20 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
21 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

10 **Minimum and Overtime Wage Violations**

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

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

24 134. As explained above, DEFENDANTS violated California's minimum and overtime
25 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
26 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
27 start and end times and meal period start and end times), payment according to scheduled hours
28 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during

1 meal periods, and/or other otherwise off-the-clock work (described above), and/or other unlawful
2 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

3 135. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
4 Aggrieved Employees for all hours worked.

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

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

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

22 139. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
23 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
24 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
25 Wage Orders, section 20.

26 **Statutory Wage Violations**

27 140. California Labor Code section 223 makes it unlawful for an employer to secretly pay
28 wages lower than required by statute while purporting to pay legal wages. As described above,

1 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
2 earned minimum and overtime compensation for all hours worked which resulted in the payment of
3 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
4 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
5 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
6 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
7 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
8 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
9 Labor Code § 2699(f)-(g).

10 **Refusal to Make Payment**

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

19 **Standard Conditions of Labor Violations**

20 142. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
21 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
22 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
23 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
24 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
25 minimum/overtime wages and other violations described herein result in separate violations of
26

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

1 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
2 1197.1 and 2699.

3 **Business Expense Violations**

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

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

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

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

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

28 148. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved

1 Employees have suffered injury in that they were not completely reimbursed as mandated by
2 California law.

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

7 150. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
8 Employees have suffered injury in that they were not completely reimbursed as mandated by
9 California law.

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

14 **Wage Statement Violations**

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

24 153. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
25 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
26 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
27 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
28 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net

1 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
2 effect during the pay period and the corresponding number of hours worked at each hourly rate by
3 the employee, in violation of Labor Code section 226(a)(9).

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

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

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

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

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

3 159. DEFENDANTS' failure to accurately list all hours worked on all wage statements
4 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
5 Employees over whether they received all wages owed to them.

6 160. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
7 they could not easily determine whether they received all wages owed to them and whether they
8 were paid for all hours worked.

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

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

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

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

26 **Unlawful Deductions**

27 165. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
28

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

1 an employee any part of wages theretofore paid by said employer to said employee.” Based on
2 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
3 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
4 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
5 Section 2699.

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

12 **Seating Violations**

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

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

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

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

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

27 170. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and
28 other Aggrieved Employees with suitable seating, and when such employees were not engaged in

1 duties which required them to stand, no seating was placed in reasonable proximity to their
2 workstations.

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

8 172. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
9 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
10 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
11 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
12 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
13 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
14 Aggrieved Employee, results in a separate civil penalty.

15 **Sick Leave Violations**

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

23 174. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
24 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
25 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
26 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
27 Aggrieved Employees' intelligent exercise of their paid sick leave.

28 175. But for this failure, PLAINTIFF and other Aggrieved Employees would have used

1 their paid sick leave at least prior to their respective separations, for as on several occasions
2 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
3 compensation.

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

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

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

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

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

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

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

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

28 182. California Labor Code section 227.3 provides that when an employer policy provides

1 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
2 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
3 employee's final rate in accordance with such contract of employment or employer policy respecting
4 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
5 off upon termination.

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

11 **Untimely Payment of Final Wages**

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

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

25 186. Based in information and belief, DEFENDANTS failed and continue to fail to timely
26 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
27 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF
28 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not

1 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
2 sick leave and/or paid time off wages at the properly accrued rates.

3 187. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
4 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
5 256.

6 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

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

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

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

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

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

14 Unlawful Inquires into Criminal History

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

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

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

1 **Failure to Provide a Safe and Healthful Workplace.**

2 198. Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the
3 California Occupational Safety and Health Act (“Cal OSHA”), employers must maintain a safe and
4 healthful place of employment. Specifically, Labor Code section 6400, requires the following:

5 199. (a) Every employer shall furnish employment and a place of employment that is safe
6 and healthful for the employees therein...

7 200. Labor Code section 6401 provides as follows:

8 201. Every employer shall furnish and use safety devices and safeguards, and shall adopt
9 and use practices, means, methods, operations, and processes which are reasonably adequate to
10 render such employment and place of employment safe and healthful. Every employer shall do every
11 other thing reasonably necessary to protect the life, safety, and health of employees.

12 202. Labor Code section 6402 prohibits the following:

13 203. No employer shall require, or permit any employee to go or be in any employment
14 or place of employment which is not safe and healthful.

15 204. Similarly, Labor Code section 6404 provides as follows:

16 205. No employer shall occupy or maintain any place of employment that is not safe and
17 healthful.

18 206. In addition to the above, Labor Code section 6403 requires that employees provide
19 safety devices to its employees. Labor Code section 6403 states:

20 207. No employer shall fail or neglect to do any of the following:

21 208. (a) To provide and use safety devices and safeguards reasonably adequate to render
22 the employment and place of employment safe.

23 209. (b) To adopt and use methods and processes reasonably adequate to render the
24 employment and place of employment safe.

25 210. (c) To do every other thing reasonably necessary to protect the life, safety, and health
26 of employees.

27 211. Similarly, Labor Code section 6406(d) states the following:

28 212. No person shall do any of the following ... (d) Fail or neglect to do every other thing

1 reasonably necessary to protect the life, safety, and health of employees.

2 213. Finally, Labor Code section 6407 provides:

3 214. Every employer and every employee shall comply with occupational safety and
4 health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations,
5 and orders pursuant to this division which are applicable to his own actions and conduct.

6 215. Based on information and belief, DEFENDANTS failed to provide a safe and
7 healthful place of employment, by among other things, failing to provide personal protective
8 equipment necessary to complete assigned job duties. For example, PLAINTIFF was required to
9 clean and disinfect work areas, but DEFENDANTS failed to provide PLAINTIFF with necessary
10 personal protective equipment, and thereby failed to provide a safe and healthful place of
11 employment.

12 216. Moreover, Labor Code section 6409.6 sets forth the actions an employer (or
13 representative of employer) must take within one business day of receiving notice of potential
14 exposure to COVID-19, including but not limited to employee-notice and reporting requirements.

15 217. At all relevant times, DEFENDANTS employed PLAINTIFF and Aggrieved
16 Employees subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times,
17 DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and
18 safeguards and of failing to adopt and use practices, means, methods, operations, and/or processes
19 which are reasonably adequate to render such employment and place of employment safe and
20 healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times
21 DEFENDANTS had and have a policy and practice of requiring or permitting employees to go or
22 be in in any employment or place of employment which is not safe and healthful, pursuant to Labor
23 Code section 6402. At all relevant times, DEFENDANTS had and have a policy and practice of
24 failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render
25 the employment and place of employment safe; adopt and use methods and processes reasonably
26 adequate to render the employment and place of employment safe; and do every other thing
27 reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code
28 section 6403.

1 218. PLAINTIFF is informed and believes and thereon alleges that these failures include,
2 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or
3 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to
4 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
5 conditions between PLAINTIFF and/or other Aggrieved Employees.

6 219. At all relevant times, DEFENDANTS had a policy and practice of failing to give
7 sufficient, adequate and proper notice to PLAINTIFF and/or other Aggrieved Employees of the
8 COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace
9 exposure from a qualifying individual as required by Labor Code section 6409.6. PLAINTIFF is
10 informed and believes that numerous employees contracted COVID-19 during the relevant time
11 periods, but that DEFENDANTS failed to provide notice to employees. Based on further
12 information and belief, DEFENDANTS do not or did not keep adequate records of written
13 notifications required in subdivision (a) for a period of at least three years.

14 220. At all relevant times, DEFENDANTS had and have a policy and practice of failing
15 within one business day after DEFENDANTS or a representative of DEFENDANTS received notice
16 of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other Aggrieved
17 Employees and/or their exclusive representatives, who were on the premises at the same worksite
18 as a qualifying individual who was within the infectious period that they may have been exposed to
19 COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and
20 practice of failing within one business day after DEFENDANTS or a representative of EMLOYER
21 received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other Aggrieved
22 Employees who were on the premises at the same worksite as the qualifying individual within the
23 infectious period and the exclusive representative, if any, with information regarding COVID-19-
24 related benefits to which the employee may be entitled under applicable federal, state or local laws,
25 including but not limited to, workers' compensation, and options for exposed employees, including
26 COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or
27 negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the
28 employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and

1 6432.

2 221. At all relevant times, DEFENDANTS had and have a policy and practice of failing
3 within one business day after DEFENDANTS or a representative of DEFENDANTS received a
4 notice of potential exposure to COVID-19 to notify PLAINTIFF and other Aggrieved Employees
5 who were on the premises at the same worksite as the qualifying individual within the infectious
6 period, and the employers of the subcontracted employees who were on the premises at the same
7 worksite as the qualifying individual within the infectious period and the exclusive representative,
8 if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of
9 the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per
10 the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated,
11 without limitation, Labor Code sections 6409.6 and 6432.

12 222. At all relevant times, DEFENDANTS had and have a policy and practice of failing
13 to notify the local public health agency in the jurisdiction of the worksite of the names, number,
14 occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as
15 defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed
16 health care provider; a COVID-19 related order to isolate provided by a public health official; or
17 died due to COVID-19, in the determination of a county public health department or per inclusion
18 in the COVID-19 statistics of a county. As such, DEFENDANTS violated, without limitation,
19 Labor Code sections 6409.6 and 6432.

20 223. PLAINTIFF is informed and believes, and based thereon alleges that
21 DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and
22 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule
23 for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
24 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
25 blowers; and a sufficient number of toilets to be used by each of sex of employee.

26 224. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS
27 violated the Labor Code sections described herein, including without limitation, for failure to:
28 furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to

1 employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other
2 Aggrieved Employees, who were on the premises at the same worksite as a qualifying individual
3 who was within the infectious period that they may have been exposed to COVID-19 pursuant to
4 California and local laws.

5 225. Based on information and belief, DEFENDANTS failed to protect Aggrieved
6 Employees from exposure to COVID-19 due to, including but not limited to, failing to
7 maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address
8 hazards related to the COVID-19 virus.

9 226. As such, DEFENDANTS failed to comply with the occupational safety and health
10 standards, failed to do everything reasonably necessary to protect the health and safety of
11 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
12 necessary to maintain a safe and healthful workplace.

13 227. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
14 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
15 is subject to civil penalties.

16 228. Under the provisions of PAGA and the above mentioned Labor Code sections,
17 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
18 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
19 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, 6432 and all applicable
20 Wage Orders as well as all interpretations of these laws by California Courts and administrative
21 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
22 the following penalties:

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

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

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

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PRAYER FOR RELIEF

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

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

Dated: August 7, 2023

CROSNER LEGAL, PC

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