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8 on behalf of the State of California,  
and others similarly situated and aggrieved

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN JOAQUIN**

11 ELITANIA BASTIDA, on behalf of the State  
12 of California, and others similarly situated  
and aggrieved,

13 Plaintiff,

14 v.

15 RIVERMAID TRADING COMPANY, a  
16 California Corporation; and DOES 1-100,  
17 inclusive,

18 Defendants.

Case No.:

STK-CV-405-2023-Sica

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

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

#### 6 **INTRODUCTION**

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

#### 12 **JURISDICTION AND VENUE**

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

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

#### 21 **THE PARTIES**

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

24 5. PLAINTIFF worked for DEFENDANTS as a non-exempt employee. PLAINTIFF  
25 worked for DEFENDANTS as a general laborer and/or similar title(s) at DEFENDANTS’ facilities  
26 located in Lodi, California, from in or around late June 2017 through in or around early May 2022.

27 6. Defendant RIVERMAID TRADING COMPANY is a California Corporation that,  
28 at all relevant times, was authorized to do business within the State of California and is doing

1 business in the State of California.

2 7. DEFENDANTS own, operate, and/or otherwise manage a wholesale produce  
3 business. DEFENDANTS own, operate, and/or otherwise manages several plants, facilities, and/or  
4 locations in California, including but not limited to, facilities in Sacramento, Delta and in Lodi,  
5 California. As part of its California operations, DEFENDANTS own, operate and/or otherwise  
6 manage at least five (5) pear and three (3) cherry packing lines, air-forced cooling tunnels and  
7 150,000 square feet of racked cold storage. DEFENDANTS' facilities in Lodi, California, include  
8 but are not limited to, cherry and pear packing lines and a massive cold-storage facility.<sup>1</sup>  
9 DEFENDANTS regularly assigned PLAINTIFF to work at its facilities located in Lodi, California,  
10 during the relevant period.

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

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

27 **JOINT LIABILITY**

28 <sup>1</sup> See <https://www.rivermaid.com/facilities-services/> (Last visited on March 8, 2023).

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

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

25           12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times  
26 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized  
27 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices  
28 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same

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

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

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

1 collectively would evaluate their wage rates.

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

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

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

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

19 **PAGA ALLEGATIONS**

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

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

27 20. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code  
28 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory

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

#### 10 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

11 21. PLAINTIFF, on March 9, 2023, through counsel, gave written notice by online filing  
12 with the California Labor and Workforce Development Agency (“LWDA”) informing it and that  
13 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged  
14 in this Complaint (“PAGA Notice”).

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

18 23. The LWDA and/or Division of Occupational Safety and Health did not provide  
19 notice of its intention to investigate DEFENDANTS’ violations after expiration of the statutorily-  
20 mandated waiting-time period(s), or at any time. To the extent any of the alleged violations were  
21 curable, DEFENDANTS failed to cure within the time allotted by PAGA. Accordingly, PLAINTIFF  
22 has exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently,  
23 PLAINTIFF’s right to file the instant lawsuit against DEFENDANTS has duly accrued.

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

#### 27 **FACTUAL ALLEGATIONS**

28 25. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees

1 worked for DEFENDANTS in the State of California. At all times referenced herein,  
2 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or  
3 permitted them to work.

4 26. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.  
5 PLAINTIFF worked for DEFENDANTS as a general laborer and/or similar title(s) at  
6 DEFENDANTS' facilities located in Lodi, California, from in or around late June 2017 through in  
7 or around May 2022. PLAINTIFF typically worked at least ten (10) to fourteen (14) hours per day.

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

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

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

23 30. Based on information and belief, Aggrieved Employees were not paid for all hours  
24 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours  
25 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-  
26 the clock work policies and/or practices. For example, based on information and belief,  
27 DEFENDANTS required Aggrieved Employees to be at their assigned workstations at the start of a  
28 scheduled shift, thereby forcing them to gather work related equipment and/or safety gear prior to

1 their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-  
2 clock work. Also, at times, PLAINTIFF's unpaid meal periods were interrupted and/or cut short  
3 due to the need to attend to the production line, meet production deadlines and/or complete other  
4 work tasks, resulting in DEFENDANTS' failure to pay PLAINTIFF for all time worked and the  
5 underpayment of wages. Based on information and belief, Aggrieved Employees were required to  
6 perform additional off-the-clock work for which they were not compensated. For example, based  
7 on information and belief, DEFENDANTS did not compensate Aggrieved Employees for all time  
8 spent donning and doffing personal protective equipment, safety equipment and/or uniforms/work  
9 clothing (e.g., hairnets, gloves, and/or face masks) during meal periods, rest periods, before the start  
10 of a scheduled shift, and after completing a scheduled shift. Based on information and belief, at  
11 times, at times, Aggrieved Employees were required to stand in line behind other employees to enter  
12 the work facility and/or to access DEFENDANTS' electronic employee time-keeping system and/or  
13 were required to undergo security screenings and/or had to spend time reinitiating DEFENDANTS'  
14 electronic time-keeping system before they could clock in for the start of their shifts. This off-the-  
15 clock work, including but not limited to, time spent waiting for other employees to clock in for their  
16 shifts, undergoing security screenings and/or reinitiating the time-keeping mechanism, was not  
17 compensated, resulting in the underpayment of minimum and overtime wages owed to Aggrieved  
18 Employees.

19 31. Based on information and belief, DEFENDANTS required Aggrieved Employees to  
20 wash their hands before clocking in for their shifts, during rest periods and/or before clocking back  
21 in from meal periods, resulting in off-the-clock work and unpaid minimum wages and unpaid  
22 overtime wages as well as meal and rest period violations. Based on information and belief,  
23 PLAINTIFF and other Aggrieved Employees were also required to complete off-the-clock work  
24 outside of scheduled shifts and/or during unpaid meal periods due to work-related phone calls and/or  
25 messages they received to their personal phones/mobile devices and were required to respond to,  
26 including but not limited to, communications regarding scheduling and/or other work tasks from  
27 supervisors and/or other Aggrieved Employees resulting in off-the-clock work and the  
28 underpayment of wages owed to Aggrieved Employees.

1           32.     Based on information and belief, PLAINTIFF and other Aggrieved Employees were  
2 not compensated for all waiting time, including but not limited to, between job assignments and/or  
3 tasks resulting in unpaid minimum and overtime wages.

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

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

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

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

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

28           38.     Based on information and belief, DEFENDANTS failed to incorporate all non-

1 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive  
2 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used  
3 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime  
4 wages owed to PLAINTIFF and other Aggrieved Employees.

5 39. Based on information and belief, DEFENDANTS sometimes paid Aggrieved  
6 Employees multiple rates of base pay in one workweek but failed to incorporate all multiple rates  
7 of base pay into the regular rate of pay for purposes of calculating the owed overtime rate. For  
8 example, on information and belief, at times, Aggrieved Employees earned multiple base pay rates  
9 during the same workweek, yet DEFENDANTS failed to incorporate all/both base pay rates into  
10 the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the  
11 miscalculation and underpayment of overtime wages owed to Aggrieved Employees.

12 **Violations of the Alternative Workweek Schedule**

13 40. Additionally, DEFENDANTS also violated California's overtime laws as to those  
14 Aggrieved Employees that were subject to an Alternative Workweek Schedule (AWS).

15 41. Per California Labor Code section 511, an employer may adopt a regularly scheduled  
16 alternative workweek consisting of shifts over eight (8) hours per day but no more than ten (10)  
17 hours per day, within a 40-hour workweek, without payment of overtime being required for those  
18 hours. Cal. Lab. Code § 511(a). If an employee with an alternative workweek works more than the  
19 scheduled work hours in any day, the employee is entitled to be paid 1.5 times his regular pay rate  
20 for the excess hours worked up to twelve (12) hours, and for any time worked in excess of 40 hours  
21 that week. Cal. Lab. Code § 511(b). If the employee works more than twelve (12) hours in a day,  
22 the employee is entitled to be paid twice his regular rate of pay for time worked in excess of the  
23 twelve (12) hours. Id. An employee is also entitled to compensation at twice his regular rate of pay  
24 for any time worked beyond eight (8) hours on a day that is not a scheduled workday. Id.

25 42. Moreover, Section 3(B)(2) of all applicable IWC Wage Orders provides that "[i]f an  
26 employer, whose employees have adopted an alternative workweek agreement permitted by this  
27 order requires an employee to work fewer hours than those that are regularly scheduled by the  
28 agreement, the employer shall pay the employee overtime compensation at a rate of one and one-

1 half times the employee's regular rate of pay for all hours worked in excess of eight (8) hours, and  
2 double the employee's regular rate of pay for all hours worked in excess of 12 hours for the day the  
3 employee is required to work the reduced hours."

4 43. Based on information and belief, Aggrieved Employees worked subject to an  
5 alternative work week schedule in which they were scheduled to work ten (10) hours per shift, four  
6 (4) shifts per week. According to the California Department of Industrial Relations Alternative  
7 Workweek Elections Database, DEFENDANTS conducted various elections to adopt a 4/10  
8 alternative workweek schedule ("AWS"), including, in 2019 and 2022, which were subsequently  
9 approved. Pursuant thereto, DEFENDANTS were required to pay Aggrieved Employees at their  
10 base rate(s) for the first ten (10) hours in a shift and required to pay 1.5 times the base rate(s) for  
11 time worked over 40 hours in a week. However, based on information and belief, on various diverse  
12 dates, Aggrieved Employees were sent home between one (1) to two (2) hours before completing  
13 their ten-hour shifts. On such shortened shifts, Aggrieved Employees were entitled to overtime pay  
14 at 1.5 times their regular rate(s) of pay after the first eight (8) hours of work. Instead,  
15 DEFENDANTS paid Aggrieved Employees their respective base rate(s) for all scheduled hours  
16 worked on the shortened shift(s) in violation of the alternative workweek schedule, and in violation  
17 of California Labor Code sections 510, 511, the applicable Wage Order, and Labor Code section  
18 1198.

19 44. Based on further information and belief, DEFENDANTS required Aggrieved  
20 Employees to work more than eight (8) hours on days that were not scheduled workdays without  
21 compensating Aggrieved Employees at twice their regular rate(s) of pay for the time worked beyond  
22 eight (8) hours on those days, in violation of California overtime laws, including but not limited to,  
23 California Labor Code sections 510 and 511, the applicable Wage Order, and Labor Code section  
24 1198.

25 45. Based on further information and belief, DEFENDNATS failed to comply with all  
26 mandated procedures for proper adoption and implementation of an alternative workweek schedule  
27 and/or failed to compensate Aggrieved Employees according to the terms of the alternative  
28 workweek schedule and/or in compliance with California Labor Code sections 510, 511, all

1 applicable IWC Wage Orders, and Labor Code section 1198.

2       46.     **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently  
3 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.  
4 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty  
5 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees  
6 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often  
7 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their  
8 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary  
9 from supervisors pressuring them to take non-compliant meal periods or skip meal periods  
10 completely. For example, at times, PLAINTIFF's unpaid meal periods were interrupted and/or cut  
11 short due to the need to attend to the production line, meet production deadlines and/or complete  
12 other work tasks, resulting in DEFENDANTS' failure to pay PLAINTIFF for all time worked as  
13 well as meal period law violations. Other times, PLAINTIFF was forced to take her meal period  
14 late (i.e. after working more than five (5) hours) due to the need to attend to the production line  
15 and/or complete other work tasks. DEFENDANTS did not pay PLAINTIFF meal period premiums  
16 for these missed and/or otherwise legally noncompliant meal periods, in violation of California meal  
17 period laws.

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

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

26       49.     Based on information and belief, DEFENDANTS required Aggrieved Employees to  
27 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take  
28 into account when scheduling meal periods for Aggrieved Employees. Based on information and

1 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

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

8 51. Moreover, based on information and belief, Aggrieved Employees who worked shifts  
9 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.  
10 For example, when PLAINTIFF worked more than ten hours in a shift, PLAINTIFF was not  
11 provided with a second meal period.

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

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

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

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

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

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

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

13       **58.** Based on information and belief, DEFENDANTS did not have a have a compliant  
14 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in  
15 practice. For example, DEFENDANTS purported to allow only two (2) rest periods per shift even  
16 on shifts lasting longer than ten (10) hours, and the two (2) purported rest periods were typically, if  
17 not always, non-compliant with California rest period law. For example, at times, Aggrieved  
18 Employees were required to work through their rest periods and/or had their rest periods cut  
19 short/interrupted due to the need to attend to the production line, meet production deadlines and/or  
20 complete other work tasks.

21       **59.** Moreover, on information and belief, DEFENDANTS failed to authorize and permit  
22 rest periods that were a “net” ten minutes in a suitable rest area and instead, to the extent rest periods  
23 were provided at all, limited Aggrieved Employees to only ten-minute rest periods, requiring them  
24 to be back at their workstations within ten minutes of leaving, in violation of California rest period  
25 law.

26       **60.** DEFENDANTS' failure to communicate that the rest period is a net ten minutes  
27 deprived Aggrieved Employees of their rights to a full rest period, as such as policy only relieves  
28 Aggrieved Employees from their workstation for ten minutes to travel to and from a rest area and

1 be back at the workstation by the end of that ten minutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28       **77.** DEFENDANTS have failed and continue to fail to keep accurate and complete

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

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

12       79.     Based on information and belief, DEFENDANTS shifted the costs of doing business  
13 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on  
14 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses  
15 including but not limited to including but not limited to, uniforms and/or the use of Aggrieved  
16 Employees personal mobile phone and data usage for work related purposes including but not  
17 limited to receiving and responding to work related messages and/or phone calls. For example, based  
18 on information and belief, PLAINTIFF and other Aggrieved Employees were regularly required to  
19 receive and respond to work-related calls and/or messages on their personal cell phones/mobile  
20 devices without being provided any reimbursement for business use of their personal mobile phones.  
21 Based on information and belief, Aggrieved Employees were not reimbursed for the cost of using  
22 their personal phone for work related purposes and/or the cost of purchasing and/or maintaining  
23 work uniforms/clothing. For example, based on information, at times, Aggrieved Employees were  
24 required to supply their own uniforms, work clothing and/or protective gear, such as, but not limited  
25 to, work shoes, gloves, and/or face masks DEFENDANTS required, however, Aggrieved  
26 Employees were not reimbursed by DEFENDANTS for the business expenses they incurred in  
27 connection therewith.

28       80.     Also, based on information and belief, DEFENDANTS failed to reimburse

1 Aggrieved Employees for expenses associated with having to purchase and/or maintain their own  
2 hand tools and/or equipment required to perform their assigned job duties. Based on information  
3 and belief, Aggrieved Employees were not reimbursed for the cost of using their personal phone for  
4 work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing  
5 uniforms and/or protective gear.

6 81. Additionally, based on information and belief, Aggrieved Employees were not  
7 reimbursed for the business use of their personal vehicles, including mileage, wear and tear, and gas  
8 when they were required to drive between job sites. For example, based on information and belief,  
9 Aggrieved Employees were at times required to use their personal vehicles to drive between  
10 DEFENDANTS' facilities and/or use their personal vehicles for other work purposes without  
11 receiving any/full reimbursement from DEFENDANTS for mileage, wear and tear on the vehicle,  
12 or gas.

13 82. Based on information and belief, DEFENDANTS regularly failed to reimburse and  
14 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section  
15 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable  
16 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties  
17 assigned by DEFENDANTS.

18 83. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement  
19 for all reasonable expenses associated with carrying out their duties required that Aggrieved  
20 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section  
21 2802.

22 84. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed  
23 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS  
24 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the  
25 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the  
26 accrued sick leave hours on the correct number of hours worked (as a result of the  
27 rounding/automatic deduction policies and practices for meal periods and/or shift start and end  
28 times/other required off-the-clock work including but not limited to unpaid meal periods) and by

1 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but  
2 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary  
3 compensation into the sick leave pay rate calculation.

4 85. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF  
5 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their  
6 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,  
7 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to  
8 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.  
9 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of  
10 used sick leave and the balance of paid sick leave.

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

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

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

26 89. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides  
27 that all employers with 26 or more employees are required to provide up to 80 hours for covered  
28 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care

1 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS  
2 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-  
3 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to  
4 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

5 90. **Reporting Time Pay Violations.** All applicable IWC Wage Orders, including but  
6 not limited to, Section 5, provide as follows:

7 91. (A) Each workday an employee is required to report for work and does report, but is  
8 not put to work or is furnished less than half said employee's usual or scheduled day's work, the  
9 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two  
10 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less  
11 than the minimum wage. (B) If an employee is required to report for work a second time in any one  
12 workday and is furnished less than two (2) hours of work on the second reporting.

13 92. Based on information and belief, PLAINTIFF and other Aggrieved Employees were  
14 not paid reporting time wages in accordance with California law, including but not limited to, section  
15 5 of the applicable IWC Wage Order. For example, at times, Aggrieved Employees reported to  
16 work for her scheduled shift but was sent home and/or was not put to work and was not paid her  
17 owed reporting time pay wages in accordance with California law.

18 93. Based on information and belief, DEFENDANTS have a policy and practice of  
19 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,  
20 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to  
21 pay all reporting time wages to Aggrieved Employees violated and continues to violate the  
22 applicable Wage Order, including but not limited to, section 5(A)-(B) and the California Labor  
23 Code, including but not limited to section 1198.

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

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

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

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

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

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

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

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

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

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

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

15           103. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

16           Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

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

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

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

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

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

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

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

2 Unlawful Inquires into Criminal History

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

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

12 114. **Failure to Provide a Safe and Healthful Workplace.** During the PAGA Period,  
13 DEFENDANTS have had a policy and practice of failing, within one business day after  
14 DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to  
15 COVID-19, to notify PLAINTIFF and other Aggrieved Employees who were on the premises at the  
16 same worksite as the qualifying individual within the infectious period, and the employers of  
17 subcontracted employees who were on the premises at the same worksite as the qualifying individual  
18 within the infectious period and the exclusive representative, if any, of the cleaning and disinfection  
19 plan that the employer is implementing per the guidelines of the COVID 10 prevention program per  
20 the Cal-OSHA COVID-19 Emergency Temporary Standards, among other things in violation of  
21 Labor Code sections 6409.6 and/or 6432.

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

26 **FIRST CAUSE OF ACTION**

27 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**  
28 **2698, ET SEQ.**

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

1 116. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

2 **Failure to Keep Accurate Records**

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

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

12 119. DEFENDANTS’ failure to keep “accurate and complete” payroll records for  
13 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all  
14 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under  
15 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and  
16 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay  
17 period during which the referenced statutes and Wage Order provisions were violated.<sup>2</sup>

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

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

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

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

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

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

23            **Meal Period Violations**

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

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

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

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

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

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

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

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

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

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

17           **Rest Period Violations**

18           134. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer  
19 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours  
20 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period  
21 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4<sup>th</sup> 1004 (2012),  
22 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for  
23 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to  
24 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at  
25 1029). The rest period requirement obligates employers to permit and authorize employees to take  
26 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control  
27 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5<sup>th</sup>  
28 257. If the employer fails to provide any required rest period, the employer must pay the employee

1 one hour of pay at the employee's regular rate of compensation for each workday the employer did  
2 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and  
3 applicable IWC Wage Order, §12(B).

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

14 136. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely  
15 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained  
16 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject  
17 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,  
18 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved  
19 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

27 139. Moreover, based on information and belief, DEFENDANTS failed to pay a rest  
28 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there

1 was a missed or otherwise unlawful rest period. Based on further information and belief, when a  
2 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including  
3 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into  
4 the regular rate of compensation for purposes of determining the owed rest period premium.

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

8 **Minimum and Overtime Wage Violations**

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

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

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

1 subject to an AWS, and/or other unlawful policies and/or practices described above which resulted  
2 in unpaid minimum and overtime wages.

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

5 145. 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.

11 146. 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.

15 147. 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, multiple base rates of pay, shift differentials,  
18 and/or other non-discretionary compensation into the regular rate of pay used to calculate the  
19 overtime rate of pay. Failing to include non-discretionary compensation into the regular rate of pay  
20 resulted in a miscalculation of the overtime wage rate, resulting in the underpayment of overtime  
21 wages owed to PLAINTIFF and other Aggrieved Employees.

22 148. 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**

27 149. 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**

11 150. 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.<sup>3</sup>

19 **Standard Conditions of Labor Violations**

20 151. 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

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27 <sup>3</sup> 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 **Reporting Time Pay Violations**

4 152. All applicable IWC Wage Orders, including but not limited to, Section 5, provide as  
5 follows:

6 153. (A) Each workday an employee is required to report for work and does report, but is  
7 not put to work or is furnished less than half said employee's usual or scheduled day's work, the  
8 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two  
9 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less  
10 than the minimum wage. (B) If an employee is required to report for work a second time in any one  
11 workday and is furnished less than two (2) hours of work on the second reporting.

12 154. Based on information and belief, PLAINTIFF and other Aggrieved Employees were  
13 not paid reporting time wages in accordance with California law, including but not limited to, section  
14 5 of the applicable IWC Wage Order. For example, at times, Aggrieved Employees reported to  
15 work for her scheduled shift but was sent home and/or was not put to work and was not paid her  
16 owed reporting time pay wages in accordance with California law.

17 155. Based on information and belief, DEFENDANTS have a policy and practice of  
18 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,  
19 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to  
20 pay all reporting time wages to Aggrieved Employees violated and continues to violate the  
21 applicable Wage Order, including but not limited to, section 5(A)-(B) and the California Labor  
22 Code, including but not limited to section 1198.

23 **Business Expense Violations**

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

1 incurred by the employee enforcing the rights granted by this section.”

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

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

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

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

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

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

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

1 California law.

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

6 **Wage Statement Violations**

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

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

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

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

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

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

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

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

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

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

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

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

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

15 177. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.  
16 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period  
17 during which the statute provisions were violated. <sup>4</sup>

18 **Unlawful Deductions**

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

25 179. Each violation results in a separate civil penalty, for each Aggrieved Employee, for  
26 each pay period during which the statute provisions were violated. See Lab. Code §225.5  
27 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty

28 <sup>4</sup> Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 provided in this article, every person who unlawfully withholds wages due any employee in  
2 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure  
3 to pay each employee”).

4 **Seating Violations**

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

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

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

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

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

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

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

28 185. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF’s

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

7 **Sick Leave Violations**

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

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

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

24 189. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records  
25 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all  
26 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees  
27 were entitled to the maximum number of hours accruable.

28 190. Upon information and belief, DEFENDANTS failed and continue to fail to comply

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

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

6 192. On information and belief, PLAINTIFF alleges that all of these practices were  
7 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

26 196. Based on information and belief, DEFENDANTS had and continue to have a  
27 uniform policy and practice of failing to allow Aggrieved Employees to use their earned  
28 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off

1 to Aggrieved Employees upon separation of employment, in violation of California law, including  
2 but not limited to, Labor Code section 227.3.

3 **Untimely Payment of Final Wages**

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

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

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

23 200. Based on further information and belief, DEFENDANTS failed to timely provide all  
24 owed wages immediately upon discharge of employment. Based in information and belief, at times,  
25 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby  
26 Aggrieved Employees would not be called in for work for longer than a single pay period due to  
27 including but not limited to DEFENDANTS’ lack of work or lack of assignments. Such instances  
28 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at

1 the end of such periods of employment, in violation of including but not limited to Labor Code  
2 section 201-202.

3 201. 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**

7 202. *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.

13 203. 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.

25 204. 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           205. 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           206. 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           207. 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           208. 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           209. 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           210. 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           211. 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           212. 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           213. (a) Every employer shall furnish employment and a place of employment that is safe  
6 and healthful for the employees therein...

7           214. Labor Code section 6401 provides as follows:

8           215. 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          216. Labor Code section 6402 prohibits the following:

13          217. 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          218. Similarly, Labor Code section 6404 provides as follows:

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

18          220. 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          221. No employer shall fail or neglect to do any of the following:

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

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

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

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

28          226. 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.

2 227. Finally, Labor Code section 6407 provides:

3 228. 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.

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

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

23 231. PLAINTIFF is informed and believes and thereon alleges that these failures include,  
24 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or  
25 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to  
26 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working  
27 conditions between PLAINTIFF and/or other Aggrieved Employees.

28 232. At all relevant times, DEFENDANTS had a policy and practice of failing to give

1 sufficient, adequate and proper notice to PLAINTIFF and/or other Aggrieved Employees of the  
2 COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace  
3 exposure from a qualifying individual as required by Labor Code section 6409.6. PLAINTIFF is  
4 informed and believes that numerous employees contracted COVID-19 during the relevant time  
5 periods, but that DEFENDANTS failed to provide notice to employees. Based on further  
6 information and belief, DEFENDANTS do not or did not keep adequate records of written  
7 notifications required in subdivision (a) for a period of at least three years.

8       233. At all relevant times, DEFENDANTS had and have a policy and practice of failing  
9 within one business day after DEFENDANTS or a representative of DEFENDANTS received notice  
10 of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other Aggrieved  
11 Employees and/or their exclusive representatives, who were on the premises at the same worksite  
12 as a qualifying individual who was within the infectious period that they may have been exposed to  
13 COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and  
14 practice of failing within one business day after DEFENDANTS or a representative of EMLOYER  
15 received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other Aggrieved  
16 Employees who were on the premises at the same worksite as the qualifying individual within the  
17 infectious period and the exclusive representative, if any, with information regarding COVID-19-  
18 related benefits to which the employee may be entitled under applicable federal, state or local laws,  
19 including but not limited to, workers' compensation, and options for exposed employees, including  
20 COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or  
21 negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the  
22 employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and  
23 6432.

24       234. At all relevant times, DEFENDANTS had and have a policy and practice of failing  
25 within one business day after DEFENDANTS or a representative of DEFENDANTS received a  
26 notice of potential exposure to COVID-19 to notify PLAINTIFF and other Aggrieved Employees  
27 who were on the premises at the same worksite as the qualifying individual within the infectious  
28 period, and the employers of the subcontracted employees who were on the premises at the same

1 worksite as the qualifying individual within the infectious period and the exclusive representative,  
2 if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of  
3 the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per  
4 the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated,  
5 without limitation, Labor Code sections 6409.6 and 6432.

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

14         236. PLAINTIFF is informed and believes, and based thereon alleges that  
15 DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and  
16 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule  
17 for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and  
18 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or  
19 blowers; and a sufficient number of toilets to be used by each of sex of employee.

20         237. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS  
21 violated the Labor Code sections described herein, including without limitation, for failure to:  
22 furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to  
23 employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other  
24 Aggrieved Employees, who were on the premises at the same worksite as a qualifying individual  
25 who was within the infectious period that they may have been exposed to COVID-19 pursuant to  
26 California and local laws.

27         238. Based on information and belief, DEFENDANTS failed to protect Aggrieved  
28 Employees from exposure to COVID-19 due to, including but not limited to, failing to

1 maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address  
2 hazards related to the COVID-19 virus.

3 239. As such, DEFENDANTS failed to comply with the occupational safety and health  
4 standards, failed to do everything reasonably necessary to protect the health and safety of  
5 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices  
6 necessary to maintain a safe and healthful workplace.

7 240. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor  
8 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and  
9 is subject to civil penalties.

10 241. Under the provisions of PAGA and the above mentioned Labor Code sections,  
11 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,  
12 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,  
13 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, 6432 and all applicable  
14 Wage Orders as well as all interpretations of these laws by California Courts and administrative  
15 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for  
16 the following penalties:

- 17 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the  
18 relevant California Labor Code provisions listed herein only if permitted by the  
19 PAGA statute, pursuant to Labor Code section 2699(a); and
- 20 b. Default PAGA penalties for any violation of the enumerated list of Labor Code  
21 violations without a civil penalty recoverable under the PAGA, all in the default  
22 amounts provided by Labor Code section 2699(f).
- 23 c. The proper measure of penalties under PAGA is the number of violations,  
24 whether those violations were committed as against PLAINTIFF or any  
25 Aggrieved Employee, whether a party to this action or not.

26 242. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,  
27 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: May 17, 2023

**CROSNER LEGAL, PC**

By:   
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Jamie Serb, Esq.  
Attorneys for Plaintiff  
ELITANIA BASTIDA