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As an individual and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DAVID CRUZ, as an individual on behalf
of herself and on behalf of all others
similarly situated,

Plaintiff,

v.

ACORN STAIRLIFTS, INC, a Florida
corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: 23STCV04661

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles
05/16/2023

David W. Slayton, Executive Officer / Clerk of Court
By: K. Martinez Deputy

1 Plaintiff, DAVID CRUZ (“PLAINTIFF”), an individual on behalf of PLAINTIFF and all
2 other similarly situated Class Members (as defined below), Aggrieved Employees (as defined
3 below) and the State of California, hereby files this First Amended Complaint against Defendants
4 ACORN STAIRLIFTS, INC, a Florida corporation; and DOES 1-100, inclusive, (collectively
5 referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges
6 as follows:

7 **JURISDICTION AND VENUE**

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

16 **THE PARTIES**

17 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State
18 of California and a citizen of the State of California. PLAINTIFF is currently employed by
19 DEFENDANTS in the State of California as a non-exempt employee.

20 3. PLAINTIFF worked for DEFENDANTS during the Class Period (defined below)
21 as an installer, field tech and/or similar title(s) at various locations in Los Angeles County and
22 Ventura County as assigned by DEFENDANTS.

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

26 5. DEFENDANTS own, operate, or otherwise manage a business that manufactures
27 and supplies stairlifts.

28 2 6. The true names and capacities of the DOE Defendants sued herein as DOES 1

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

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

16 **JOINT LIABILITY**

17 8. Under California law, the definition of the terms “to employ” are broadly construed
18 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
19 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or
20 (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*,
21 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising
22 control was to reach situations in which multiple entities control different aspects of the
23 employment relationship. Supervision of the work, in the specific sense of exercising control over
24 how services are properly performed, is properly viewed as one of the “working conditions”
25 mentioned in the wage order. *Id.* at 76. A joint employer relationship exists, for example, when
26 one entity (such as a temporary employment agency) hires and pays a worker, and the other entity
27 supervises the work. *Id.* Moreover, the California Court of Appeal recently broadened the test for
28 joint employment in California, applying a less stringent standard to what constitutes sufficient

1 control by a business over its vendor's employees' wages and working conditions to render that
2 business liable as a joint employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th
3 868 (2021); "[i]f the putative joint employer instead exercises enough control over the
4 intermediary entity to *indirectly* dictate the wages, hours, or working conditions of the employee,
5 that is a sufficient showing of joint employment," *Id.* at 875 [emphasis added].

6 9. During PLAINTIFF's employment by DEFENDANTS, PLAINTIFF and the Class
7 Members (defined below) were jointly employed by DEFENDANTS for purposes of the Wage
8 Orders, under the alternative definitions of "to employ" adopted by the California Supreme Court
9 in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
10 hours and working conditions of PLAINTIFF and the Class Members and Aggrieved Employees;
11 (2) suffered or permitted PLAINTIFF and Class Members and Aggrieved Employees to work for
12 them; and (3) engaged PLAINTIFF and Class Members and Aggrieved Employees to work for
13 them.

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

28 4 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant

1 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class
2 Members and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and
3 causes of action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the
4 Class Members and Aggrieved Employees' wages, hours and working conditions, and/or suffered
5 or permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be
6 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.

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

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

28 5 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same

1 control over, applied the same policies and practices, and engaged in the same acts and omissions
2 with regard to the other Class Members and Aggrieved Employees.

3 **CLASS ALLEGATIONS**

4 15. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly
5 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
6 seeks to represent are defined as follows and referred to as the “Class” or “Class Members”:

7 All current and former non-exempt employees that worked either
8 directly or via a staffing agency for any of the DEFENDANTS at
9 any location in California at any time within the four years and 178
10 days prior to the filing of the initial Complaint (“Class Period”).¹

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

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

26 ¹ In response to the COVID-19 pandemic, the Judicial Council of California
27 adopted Emergency Rule 9(a) (California Rules of Court), whereby “statutes of limitations and
28 repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1,
2020.”

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

8 c. Ascertainable Class. The proposed Class is ascertainable as members can be
9 identified and located using information in DEFENDANTS' business, payroll
10 and personnel records.

11 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class
12 Members. PLAINTIFF suffered a similar injury as members of the Class as a
13 result of DEFENDANTS' common practices regarding, *inter-alia*, failure to
14 calculate and pay all owed minimum and overtime wages, failure to provide
15 proper meal periods and rest periods or premium compensation in lieu thereof,
16 failure to provide accurate wage statements, and failure to reimburse business
17 expenses.

18 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
19 Class Members. PLAINTIFF has no interests adverse to the interests of the
20 other Class Members. Counsel who represent PLAINTIFF are competent and
21 experienced in litigating similar class action cases and are California lawyers
22 in good standing. Counsel for PLAINTIFF have the experience and resources
23 to vigorously prosecute this case.

24 f. Superiority. A class action is superior to other available means for the fair and
25 efficient adjudication of this controversy since individual joinder of all
26 members of the class is impractical. Class action treatment will permit a large
27 number of similarly situated persons to prosecute their common claims in a
28 single forum simultaneously, efficiently, and without the unnecessary

1 duplication of effort and expense that numerous individual actions would
2 engender. Furthermore, as the damages suffered by each individual member
3 of the Class may be relatively small, the expenses and burden of individual
4 litigation would make it difficult or impossible for individual members of the
5 Class to redress the wrongs done to them, while an important public interest
6 will be served by addressing the matter as a class action. The cost to the court
7 system of adjudication of such individualized litigation would be substantial.
8 Individualized litigation would also present the potential for inconsistent or
9 contradictory judgments. Finally, the alternative of filing a claim with the
10 California Labor Commissioner is not superior, given the lack of discovery in
11 such proceedings, the fact that there are fewer available remedies, and the
12 losing party has the right to a trial de novo in the Superior Court.

13 FACTUAL AND LEGAL ALLEGATIONS

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

18 17. PLAINTIFF is currently employed by DEFENDANTS as a non-exempt employee.
19 PLAINTIFF worked for DEFENDANTS as an installer and/or similar title(s) in Los Angeles
20 County and Ventura County from in or around July 2013 through in or around April 2022 when
21 PLAINTIFF went out on leave. PLAINTIFF regularly worked at least eight (8) to twelve (12)
22 hours per day, at least five (5)-six (6) days per week.

23 18. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
24 hourly basis for time counted by DEFENDANTS as hours worked. PLAINTIFF also received
25 commissions and/or bonus compensation for services performed including but not limited to non-
26 discretionary bonuses earned for completing installations.

27 19. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
28 PLAINTIFF and Class Members and Aggrieved Employees for all hours worked, resulting in the

1 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate
2 PLAINTIFF and Class Members and Aggrieved Employees for all hours worked by virtue of,
3 DEFENDANTS' automatic deduction and time rounding policies, and failure to relieve employees
4 of all duties/employer control during unpaid meal periods or otherwise unlawful practices for
5 missed or improper meal periods, as explained below.

6 20. Based on information and belief, DEFENDANTS implemented a policy and/or
7 practice of rounding meal period start and end times and/or automatically deducting at least thirty
8 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
9 PLAINTIFF and other Class Members and Aggrieved Employees were subject to
10 DEFENDANTS' control during purported meal periods and/or were otherwise not afforded lawful
11 meal periods, depriving PLAINTIFF and Class Members and Aggrieved Employees of all wages
12 owed. For example, during most if not all shifts PLAINTIFF worked, DEFENDANTS required
13 PLAINTIFF to clock out for a thirty-minute meal period but to continue working due to the need
14 to complete installations within specified time windows and/or other work tasks, resulting in off-
15 the-clock work for each workweek PLAINTIFF worked during the Class Period, and the
16 substantial underpayment of minimum wages and overtime wages owed to PLAINTIFF. Based
17 on information and belief, DEFENDANTS have a policy and practice of requiring Class Members
18 and Aggrieved Employees to clock out for meal periods but to continue working during unpaid
19 meal periods, resulting in the underpayment of minimum wages and overtime wages owed to
20 Class Members and Aggrieved Employees.

21 21. Based on information and belief, Class Members and Aggrieved Employees were
22 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time
23 entries or paying according to scheduled hours worked instead of actual time worked, and/or
24 mandated off-the clock work policies and/or practices. Moreover, based on information and belief,
25 Class Members and Aggrieved Employees were not paid all owed wages for "on-call" time.

26 22. Based on information and belief, at times, DEFENDANTS' electronic time-keeping
27 system/app malfunctioned such that Class Members and Aggrieved Employees were required to
28 either reinitiate and/or otherwise troubleshoot the system and/or wait for the system to boot prior

1 to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or
2 clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages
3 owed to Class Members and Aggrieved Employees. Based on information and belief, Class
4 Members and Aggrieved Employees experienced the same issues when clocking out for shifts
5 and/or back in for meal periods. This time spent under DEFENDANTS' control was not recorded
6 and not compensated and resulted in unpaid minimum wages owed to Class Members and
7 Aggrieved Employees.

8 23. Based on information and belief, PLAINTIFF and other Class Members and
9 Aggrieved Employees were required to complete other off-the-clock work tasks before clocking in
10 for the start of their shifts, after clocking out for the end of their shifts and/or during
11 uncompensated meal periods, resulting in significant off-the-clock work and the underpayment of
12 minimum and overtime wages owed to PLAINTIFF and other Class Members and Aggrieved
13 Employees. For example, based on information and belief, at times, Class Members and
14 Aggrieved Employees received work-related communications from management members before
15 starting and/or after completing a scheduled shift and/or on their days off, yet Class Members and
16 Aggrieved Employees were not paid for all time spent responding to such work-related texts, calls,
17 and/or communications.

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

23 25. Based on further information and belief, DEFENDANTS implemented a time-
24 rounding system that as applied systematically deprived PLAINTIFF and other Class Members
25 and Aggrieved Employees of compensable time because the time-rounding system implemented
26 by DEFENDANTS would almost always, if not always, result in understating actual compensable
27 work time.

28 26. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,

1 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
2 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
3 minimum wages owed to PLAINTIFF and Class Members and Aggrieved Employees as well as
4 unpaid overtime wages for those Class Members and Aggrieved Employees who worked more
5 than eight (8) hours in a day and/or more than forty (40) hours in a week.

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

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

15 29. Based on information and belief, DEFENDANTS failed to incorporate all non-
16 discretionary remuneration, including but not limited to, shift differential pay, bonus pay,
17 commissions/piece-rate compensation and/or other non-discretionary pay into the regular rate of
18 pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment
19 of overtime wages owed to PLAINTIFF and other Class Members and Aggrieved Employees. For
20 example, PLAINTIFF also received commissions and/or bonus compensation for services
21 performed including but not limited to non-discretionary bonuses earned for completing
22 installations. However, DEFENDANTS failed to incorporate all non-discretionary compensation,
23 including but not limited to, commissions and/or bonus compensation for services performed
24 and/or other non-discretionary compensation, into the regular rate of pay used to calculate the
25 owed overtime rate, resulting in the miscalculation of the owed overtime rate, and the
26 underpayment of overtime wages owed to PLAINTIFF.

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

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

8 31. Based on information and belief, other Class Members and Aggrieved Employees
9 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or
10 had their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or
11 otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints
12 of their job duties, and/or the need to meet DEFENDANTS' goals and expectations. For example,
13 PLAINTIFF was rarely (if ever) able to take a timely, off-duty thirty-minute meal periods due to
14 the need to complete his job duties including but not limited to completing installations and/or
15 driving to the next job location. DEFENDANTS frequently scheduled PLAINTIFF with back-to-
16 back installations throughout the day and subjected PLAINTIFF to a work schedule that did not
17 permit the taking of uninterrupted thirty minute off duty meal breaks. As such, PLAINTIFF
18 would often eat his meals and/or take purported meal periods while driving between installation
19 locations/job assignments, and/or would regularly take late meal periods in order to complete his
20 assigned installations on time. Moreover, based on information and belief, PLAINTIFF frequently
21 received work related calls during his purported meal periods and was required to respond to such
22 work-related calls/messages/communications from his supervisors, DEFENDANTS' customers
23 and/or other Class Members and Aggrieved Employees.

24 32. DEFENDANTS required PLAINTIFF to clock out for meal periods but to continue
25 working due to the need to complete installations within specified time windows and/or other
26 work tasks. Based on information and belief, DEFENDANTS implemented policies and/or
27 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
28 DEFENDANTS' control during unpaid meal periods. For example, based on information and

1 belief, Class Members and Aggrieved Employees were required to remain tethered to their
2 worksites and/or in immediate physical proximity to their assigned job sites and/or were required
3 to monitor work communication devices and respond to work-related communications during
4 unpaid meal periods. As such, Class Members and Aggrieved Employees were not relieved of all
5 duties and DEFENDANTS' control during unpaid meal periods.

6 33. Based on information and belief, DEFENDANTS required Class Members and
7 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
8 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
9 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
10 unaccounted pre-shift off-the-clock work.

11 34. Based on information and belief, despite DEFENDANTS' failure to provide lawful
12 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
13 times of PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods and/or
14 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
15 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
16 Members and Aggrieved Employees did not receive lawful meal periods.

17 35. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
18 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
19 compliant thirty (30) minute second meal period. For example, when PLAINTIFF worked shifts
20 lasting longer than ten hours, he was not provided with any version of a second meal period.

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

25 37. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
26 records of the true start and end times of PLAINTIFF's and Class Members and Aggrieved
27 Employees' meal periods. Based on information and belief, to the extent meal period were
28 recorded, DEFENDANTS illegally rounded the start and end times of purported meal periods

1 resulting in PLAINTIFF and other Class Members and Aggrieved Employees not being paid for
2 all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC*
3 (2021) 11 Cal.5th 58.

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

8 39. DEFENDANTS failed to pay PLAINTIFF and other Class Members and
9 Aggrieved Employees, an additional hour of wages at their respective regular rates of
10 compensation for each workday a lawful meal period was not provided. DEFENDANTS either
11 failed to pay a meal period premium at all for each workday a lawful meal period was not
12 provided and/or failed to pay the proper meal period premium for failure to incorporate all non-
13 discretionary remuneration, including but not limited to, bonuses, commissions/piece-rate pay,
14 shift differential pay and/or other non-discretionary compensation into the regular rate or
15 compensation for purposes of calculating the owed meal period premium.

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

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

24 42. Based on information and belief, DEFENDANTS did not have a have a compliant
25 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
26 practice. For example, PLAINTIFF rarely (if ever) received a legally compliant rest period or any
27 form of a rest period. PLAINTIFF was pressured to complete his installments and/or other work
28 tasks according to DEFENDANTS' designated schedule and was not afforded with the

1 opportunity to take legally compliant rest periods. Moreover, based on information and belief
2 PLAINTIFF was required to be responsive to work-related communications during any purported
3 rest periods.

4 43. Based on information and belief, Class Members and Aggrieved Employees' rest
5 periods were interrupted, cut short, on duty, restricted to work premises and/or late due to
6 understaffing, the nature and constraints of their job duties, and/or due to commentary from
7 supervisors/managers pressuring them to skip rest periods completely or otherwise take non-
8 compliant rest periods.

9 44. Moreover, DEFENDANTS failed to provide any form of a third rest period on
10 shifts lasting longer than ten hours. For example, when PLAINTIFF worked shifts lasting longer
11 than ten hours, he was not afforded any version of a third rest period.

12 45. Based on information and belief, DEFENDANTS implemented policies and/or
13 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
14 all duties and DEFENDANTS' control during rest periods. For example, based on information
15 and belief, Class Members and Aggrieved Employees were required to remain tethered to their
16 worksites/assigned job sites and/or were required to monitor work communication devices and
17 respond to work-related communications during any purported rest periods. As such, Class
18 Members and Aggrieved Employees were not relieved of all duties and DEFENDANTS' control
19 during any purported rest periods.

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

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

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

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

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

19 50. Based on information and belief, wage statements issued by DEFENDANTS failed
20 to list all applicable hourly rates in effect during the pay period and the corresponding number of
21 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9)
22 due to including but not limited to, DEFENDANTS' failure to accurately list a category
23 containing the proper overtime rate. For example, as described herein, based on information and
24 belief, DEFENDANTS also failed to incorporate all forms of non-discretionary compensation
25 earned during the pay period into the overtime pay rate calculation, and as such, failed to display
26 the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other Class
27 Members and Aggrieved Employees.

28 51. Based on information and belief, DEFENDANTS issued wage statements that

1 failed to list the number of piece rate units completed/earned during the pay period and the
2 applicable rate of pay for each piece rate unit.

3 52. Based on information and belief, DEFENDANTS issued wage statements that
4 failed to list the number of non-discretionary bonuses earned and failed to list the applicate rate for
5 each non-discretionary bonus. Instead, based on information and belief, DEFENDANTS' wage
6 statements list the total amount of non-discretionary bonuses earned without listing the number of
7 bonuses and/or the rate for each bonus, thereby making it impossible for Class Members and
8 Aggrieved Employees to know whether they received all owed non-discretionary
9 bonuses/compensation.

10 53. Additionally, in violation of Labor Code section 226.2, DEFENDANTS failed to
11 issue accurate wage statements in accordance with Labor Code section 226, by issuing wage
12 statements that failed to list the total hours of compensable non-productive time, and the total
13 hours of rest periods, the rate of compensation for the non-productive time and/or rest periods, and
14 the gross wage earned for the non-productive time and for the rest periods during the pay period
15 for which the Class Members and Aggrieved Employees were paid on a strictly commission
16 and/or piece rate basis.

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

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

24 56. **Unreimbursed Business Expenses.** Based on information and belief,
25 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to incur
26 business expenses as a direct consequence of the performance of their job duties without providing
27 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
28 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide

1 and maintain work tools that are supposed to be the responsibility of the employer.

2 57. Based on information and belief, DEFENDANTS shifted the costs of doing
3 business onto Class Members and Aggrieved Employees by requiring them to pay for business
4 expenses, including but not limited to, purchase and/or maintenance of tools, including hand tools
5 and/or power tools and/or other work tools and the use of Class Members and Aggrieved
6 Employees' personal mobile phone and data usage for work related purposes to receive and
7 respond to work related messages and/or phone calls. For example, PLAINTIFF was required to
8 supply his own tools to perform the work DEFENDANTS assigned him, and DEFENDANTS did
9 not reimburse PLAINTIFF at all and/or in full for the business expenses he incurred in connection
10 therewith. Moreover, although DEFENDANTS at times provided PLAINTIFF with a company
11 phone, the company phone often malfunctioned and/or did not properly work such that
12 PLAINTIFF often had to use his personal cell phone for work, including but not limited to, to
13 receive calls/messages from his supervisor regarding work tasks. DEFENDANTS did not
14 reimburse PLAINTIFF for this business use of his personal cell phone. Based on information and
15 belief, Class Members and Aggrieved Employees were/are at times required to use their personal
16 vehicles for work purposes without receiving any reimbursement from DEFENDANTS and /or
17 full reimbursement from DEFENDANTS, including but not limited to, reimbursement at the
18 applicable legally mandated Internal Revenue Service (IRS) per mile compensation rate. For
19 example, based on information and belief, at times Class Members and Aggrieved Employees
20 were required to drive between job sites and/or use their personal vehicles for other work purposes
21 without receiving any and/or full reimbursement from DEFENDANTS for the vehicle-related
22 expenses incurred in connection therewith.

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

28 59. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with
18

1 full reimbursement for all reasonable expenses associated with carrying out their duties required
2 that Class Members and Aggrieved Employees subsidize and/or carry the burden of business
3 expenses in violation of Labor Code section 2802.

4 60. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
5 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
6 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

7 **FIRST CAUSE OF ACTION**
8 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
9 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

10 61. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

23 64. DEFENDANTS violated California’s minimum wage laws by failing to
24 compensate PLAINTIFF and the Class Members for all hours worked by virtue of, among other
25 things, DEFENDANTS’ time rounding, automatic deduction for meal periods, off-the-
26 clock/unpaid work completed during meal periods, other pre-shift, post-shift and/or otherwise off-
27 the-clock work, and/or payment according to scheduled hours worked rather than actual hours
28 worked (described above), which resulted in the failure to account for all hours worked and thus
the denial of minimum wages.

1 65. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF
2 and Class Members for all hours worked.

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

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

12 **SECOND CAUSE OF ACTION**
13 **Recovery of Unpaid Overtime Wages**
14 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

15 68. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

16 69. Employees in California must be paid overtime, equal to one and one-half times the
17 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
18 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day
19 of work in a workweek, and they must be paid double the regular rate of pay for all hours worked
20 in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the
seventh consecutive day of work in a workweek, unless they are exempt.

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

27 71. Based on information and belief, DEFENDANTS failed to pay twice Class
28 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for

1 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
2 violation of California's overtime laws.

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

10 73. DEFENDANTS' conduct described above is in violation of California Labor Code
11 sections 510 and 1194 and all applicable Wage Orders.

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

THIRD CAUSE OF ACTION

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

14
15 75. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

16
17 76. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
18 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-
19 minute meal break free from all duties and employer control for all shifts longer than 5 hours, and
20 a second 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal
21 periods can be waived, but only under the following circumstances: (1) if an employee's total
22 work period in a day is over five (5) hours but no more than six (6) hours, the required meal period
23 may be waived by mutual consent of the employer and employee, and (2) if an employee's total
24 work period in a day is over ten (10) hours but no more than twelve (12) hours, the required
25 second meal period may be waived by mutual consent of the employer and employee, but only if
26 the first meal period was not waived. Employers covered by the Wage Orders have an obligation
27 to both (1) relieve their employees for at least one meal period for shifts over five hours (see
28 above), and (2) to record having done so.

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

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

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

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

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

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

26 83. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
27 are entitled to one additional hour's pay at the employee's regular rate of compensation for each
28 day a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and

1 costs, all in an amount to be proved at trial.

2 **FOURTH CAUSE OF ACTION**

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

5 84. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

6 85. Labor Code section 226.7 and all applicable IWC Wage Orders require an
7 employer to authorize or permit an employee to take a rest period of ten (10) net minutes for every
8 four hours worked or major fraction thereof. Such rest periods must be in the middle of the four-
9 hour period “insofar as practicable.” In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th
10 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid
11 rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more
12 than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to
13 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize
14 employees to take off-duty rest periods, meaning employers must relieve employees of all duties
15 and relinquish control over how employees spend their time. *Augustus v. ABM Security Services,*
16 *Inc.*, (2016) 5 Cal.5th 257.

17 86. If the employer fails to provide any required rest period, the employer must pay the
18 employee one hour of pay at the employee’s regular rate of compensation for each workday the
19 employer did not provide at least one legally required rest period, pursuant to Labor Code section
20 226.7.

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

27 88. Based on information and belief, DEFENDANTS implemented policies and/or
28 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
control during rest periods. Based on further information and belief, Class Members were
23

1 pressured to complete their work duties according to a designated schedule such that rest periods
2 were only taken once tasks were completed, and/or as time permitted.

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

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

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

16 **FIFTH CAUSE OF ACTION**

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

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

19 93. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the
20 Class

21 Members were entitled to receive, semimonthly or at the time of each payment of wages, an
22 itemized wage statement accurately stating the following:

23 (1) gross wages earned, (2) total hours worked by the employee,
24 except for any employee whose compensation is solely based on a
25 salary and who is exempt from payment of overtime under
26 subdivision (a) of Section 515 or any applicable order of the
27 Industrial Welfare Commission, (3) the number of piece-rate units
28 earned and any applicable piece rate if the employee is paid on a
piece-rate basis, (4) all deductions, provided that all deductions
made on written orders of the employee may be aggregated and
shown as one item, (5) net wages earned, (6) the inclusive dates of
the period for which the employee is paid, (7) the name of the
employee and his or her social security number, except that by

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

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

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

96. As explained above, wage statements issued by DEFENDANTS failed to list the "total hours worked" by PLAINTIFF and Class Members (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve Class Members of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices all described in greater detail *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours

1 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
2 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

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

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

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

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

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

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

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

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

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

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

23 **SIXTH CAUSE OF ACTION**

24 **Failure to Reimburse Business Expenses**

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

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

27 109. California law requires employers to indemnify their employees for all necessary
28 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
27

1 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
2 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’
3 fees incurred by the employee enforcing the rights granted by this section.”

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

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

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

18 113. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Class
19 Members have suffered injury in that they were not completely reimbursed as mandated by
20 California law.

21 114. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class
22 Members are entitled to recover the full amount of reimbursable expenses due, in addition to
23 reasonable attorneys’ fees, and costs of suit.

24 **SEVENTH CAUSE OF ACTION**

Unfair Competition

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

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

27 116. DEFENDANTS’ unlawful conduct alleged herein constitutes unfair competition
28 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
28

1 conduct includes all unlawful conduct alleged herein, including but not limited to:
2 DEFENDANTS' failure to pay minimum and overtime wages by virtue of its illegal policies and
3 practices; DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest
4 periods or pay proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and
5 accurate itemized wage statements; and DEFENDANTS' failure to reimburse business expenses;
6 and DEFENDANTS' failure to provide paid sick leave (or paid time off in lieu thereof) at the
7 properly accrued rates (due to, including but not limited to, DEFENDANTS' failure to incorporate
8 all non-discretionary compensation into the sick pay calculation and failure to base the accrued
9 sick leave on the correct number of hours worked as a result of DEFENDANTS' time-
10 rounding/auto deduction policies and practices, payment according to scheduled hours worked
11 and/or other off-the-clock work policies and practices).

12 117. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
13 California Labor Code, DEFENDANTS have gained a competitive advantage over other
14 comparable companies doing business in the State of California that comply with their obligations
15 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
16 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
17 itemized wage statements, to reimburse employees for all business expenses, and to pay all owed
18 minimum and overtime wages.

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

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

28 29 120. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc

1 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
2 by law.

3 **EIGHTH CAUSE OF ACTION**
4 **Violation of the Private Attorneys General Act of 2004**
5 **(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)**

6 121. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

7 122. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
8 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of PLAINTIFF,
9 the State of California and Aggrieved Employees, regarding violations of the California Labor
Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

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

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

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

26 124. On March 3, 2023, PLAINTIFF through counsel, gave written notice by online
27 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
28 DEFENDANTS failed to comply with California's labor laws with regard to the allegations
30

1 alleged in this Complaint ("PAGA Notice").

2 125. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
3 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of
4 the alleged violations were curable, DEFENDANTS failed to cure within the time allotted by
5 PAGA. Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor
6 Code section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against
7 DEFENDANTS has duly accrued.

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

11 127. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
12 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California Labor
13 Code sections, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1,
14 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage
15 Orders.

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

22 129. Additionally, DEFENDANTS have violated the following Labor Code sections and
23 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

24 **Failure to Keep Accurate Records**

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

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

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

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

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

19 134. Section (b) of Labor Code section 226 further requires employers to "afford current
20 and former employees the right to inspect or receive a copy of records pertaining to their
21 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
22 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
23 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
24 the request as soon as practicable, but no later than 21 calendar days from the date of the request.

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

1 A violation of this subdivision is an infraction.” An employer’s failure to comply within this
2 timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750)
3 penalty from the employer. Lab. Code section 226(f).

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

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

17 **Failure to Provide Written Commission Agreements**

18 137. Labor Code section 2751 requires that all commission contracts "be in writing and .
19 . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code
20 section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract
21 to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract
22 from each employee." *Id.* section 2751(b).

23 138. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
24 Aggrieved Employees who were compensated on a commission basis with proper written
25 commission agreements, in violation of Labor Code section 2751.

26 **Violation of Labor Code Section 226.2**

27 139. Labor Code section 226.2 requires an employer to pay employees compensated on
28 a piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any

1 piece-rate pay. This statute further requires an employer to include on the wage statements for
2 these employees the total hours of compensable rest and recovery period, the total hours for other
3 non-productive time, the rates of compensation for these hours, and the gross wages paid for these
4 hours. In addition, the statute requires that employees shall be compensated for rest and recovery
5 periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate
6 determined by dividing the total compensation for the workweek, exclusive of compensation for
7 rest and recovery periods and any premium compensation for overtime, by the total hours worked
8 during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum
9 wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a
10 commission basis.

11 140. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
12 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
13 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
14 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
15 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
16 226.2.

17 **Statutory Wage Violations**

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

1 **Refusal to Make Payment**

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

11 **Standard Conditions of Labor Violations**

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

20 **Sick Leave Violations**

21 144. DEFENDANTS violated California's paid sick leave laws including, Labor Code
22 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
23 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
24 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
25 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but

26 _____
27 ³ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
2 compensation into the sick leave pay rate calculation.

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

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

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

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

21 149. These practices violated California's sick leave laws, Labor Code section 245, *et*
22 *seq.*

23 150. On information and belief, PLAINTIFF alleges that all of these practices were
24 experienced and continue to be experienced by other Aggrieved Employees.

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

28 36 **Failure To Provide Supplemental Paid Sick Leave**

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

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

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

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

20 **Untimely Payment of Final Wages**

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

28 37 156. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages

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

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

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

15 **Violation of Labor Code section 976**

16 159. Labor Code section 976 provides that “No person shall publish or cause to be
17 published any advertisement, solicitation or communication in any newspaper, poster, or letter,
18 offering employment as a salesman, broker or agent whether as an employee or independent
19 contractor, which advertisement, solicitation or communication (a) is willfully designed to mislead
20 any person as to compensation or commissions which may be earned; or (b) falsely represents the
21 compensation or commissions which may be earned.”

22 160. Based on information and belief, DEFENDANTS have a policy and/or practice of
23 offering prospective employees, including Aggrieved Employees, a higher compensation and
24 commission that is misleading as it falsely represents the compensation or commission that will be
25 earned during employment, as the actual compensation or commission earned is lower than that
26 which is offered to induce employment or continued employment. Such a practice or policy is in
27 violation of Labor Code section 976.

28 **Unlawful Inquiries into Salary History**

1 161. Labor code section 432.3 provides in part “(b) An employer shall not, orally or in
2 writing, personally or through an agent, seek salary history information, including compensation
3 and benefits, about an applicant for employment.” Based on information and belief,
4 DEFENDANTS have a policy and/or practice of unlawfully asking Aggrieved Employees to
5 reveal their salary history when applying for employment with DEFENDANTS. For example,
6 based on information and belief when Aggrieved Employees applied for employment,
7 DEFENDANTS required them to fill out an application that requested, among other things, the
8 hourly rate and/or salary of the former employment relationship in violation of Labor Code section
9 432.3.

10 162. Moreover, by requiring Aggrieved Employees to disclose prior salary information
11 in a written application for employment, DEFENDANTS violated Labor Code section 432.5 by
12 requiring Aggrieved Employees to agree in writing to disclose their salary history as a condition of
13 obtaining employment with DEFENDANTS, in violation of California law.

14 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

15 163. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
16 require any employee or applicant for employment to agree, in writing, to any term or condition
17 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
18 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
19 conditions of employment including but not limited to unlawful non-compete/non-solicitation
20 agreements unlawful commissions agreements and/or unlawful confidentiality/nondisclosure
21 agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or
22 continuing employment in violation of Labor Code section 432.5.

23 164. The California Labor Code places certain procedural and substantive limits on an
24 employers’ ability to conduct employee background checks and on how employers can use the
25 information they obtain through those background checks. Labor Code section 1024.5 states that
26 employers, except for financial institutions, may order a credit check only if the individual works
27 (or is applying to work) in certain positions (e.g., managerial positions, financially-related
28 positions, and certain government positions). Additionally, the Investigative Consumer Reporting

1 Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act
2 (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an
3 employee background check, including but not limited to identifying an appropriate reason for the
4 background check, a separate consent form with required disclosures and certain formatting
5 requirements, additional forms such as a summary of rights, a way by which to request a copy of
6 the report, as well as proper notice of adverse actions taken, among other statutory requirements.

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

11 166. Based on information and belief, DEFENDANTS required Aggrieved Employees
12 to submit and/or agree to submit in writing to unlawful criminal background checks as a condition
13 of obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged
14 above.

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

21 168. Based on further information and belief, DEFENDANTS knew that requiring
22 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
23 condition of obtaining and/or holding employment was unlawful.

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

26 Unlawful Inquires into Criminal History

27 170. Labor Code section 432.7 prohibits an employer from asking applicants about past
28 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on

1 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
2 convictions on its employment application, in violation of California law.

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

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

13 173. Under the provisions of PAGA and the above mentioned Labor Code sections,
14 including but not limited to Labor Code sections 201-203, 216, 221-223, 226, 226.2, 226.7, 245-
15 248.6, 432, 432.5, 432.7, 510, 512, 558, 558.1, 976, 1024.5, 1174.5, 1194, 1197, 1197.1, 1198,
16 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
17 interpretations of these laws by California Courts and administrative bodies, as well as any other
18 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

28 41 174. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,

1 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

2 **PRAYER FOR RELIEF**

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

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

21
22 Dated: 5/16/2023

CROSNER LEGAL, PC

23 

24 By: _____
25 Zachary M. Crosner, Esq.
26 Jamie Serb, Esq.
27 Attorneys for Plaintiff DAVID CRUZ
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DEMAND FOR JURY TRIAL

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

Dated: 5/16/2023

CROSNER LEGAL, PC



By: _____

Zachary M. Crosner, Esq.

Jamie Serb, Esq.

Attorneys for Plaintiff DAVID CRUZ