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

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

14 MIGUEL JONAS RUIZ, on behalf of the
15 State of California, and others similarly
16 situated and aggrieved,

17 Plaintiff,

18 v.

19 DOTHAN SECURITY, INC., an Alabama
20 Corporation; and DOES 1-100, inclusive,

21 Defendants.

Case No.: **23STCV12886**

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

1
2 Plaintiff, MIGUEL JONAS RUIZ (“PLAINTIFF”), an individual on behalf of PLAINTIFF,
3 the State of California, and all other Aggrieved Employees (as defined below), hereby files this
4 Complaint against Defendants DOTHAN SECURITY, INC., an Alabama Corporation; and DOES
5 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed
6 and believes and thereon alleges as follows:

7 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
26 DEFENDANTS as a security guard, field supervisor, and/or similar title(s) at various job
27 sites/locations in California as assigned by DEFENDANTS from in or around June 2022 through
28 on or around January 11, 2023. DEFENDANTS assigned PLAINTIFF to work primarily in Los

1 Angeles County, including but not limited to, at job sites located in Long Beach, California and Los
2 Angeles, California.

3 6. Defendant DOTHAN SECURITY, INC., is an Alabama Corporation that, at all
4 relevant times, was authorized to do business within the State of California and is doing business in
5 the State of California.

6 7. DEFENDANTS own, operate, and/or manage a business that provides security
7 services, including but not limited to, uniformed security services, electronic security and consulting
8 services.¹ DEFENDANTS own, operate and/or otherwise manage multiple offices, job sites,
9 locations and/or facilities located in California, including but not limited to, offices, job sites,
10 facilities located in Diamond Bar, California, Palm Desert, California, and Stockton, California.²

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

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

27
28 ¹ See <https://www.dsisecurity.com/about/> (Last visited on March 1, 2023).

² See <https://www.dsisecurity.com/dsi-locations/> (Last visited on March 1, 2023).

1 **JOINT LIABILITY**

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

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

26 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
27 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
28 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices

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

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

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

1 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
2 collectively would evaluate their wage rates.

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

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

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

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

20 **PAGA ALLEGATIONS**

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

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

28 20. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code

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

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

12 21. PLAINTIFF, on March 2, 2023, through counsel, gave written notice by online filing
13 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
14 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
15 in this Complaint (“PAGA Notice”).

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

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

22 **FACTUAL ALLEGATIONS**

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

27 25. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
28 DEFENDANTS as a security guard, field supervisor, and/or similar title(s) at various job

1 sites/locations in California as assigned by DEFENDANTS from in or around June 2022 through
2 on or around January 11, 2023. DEFENDANTS assigned PLAINTIFF to work primarily in Los
3 Angeles County, including but not limited to, at job sites located in Long Beach, California and Los
4 Angeles, California. PLAINTIFF regularly worked at least six (6) to twelve (12) hours per day, at
5 least five (5) to six (6) days per week.

6 26. PLAINTIFF's job duties included but were not limited to, patrolling/providing
7 security services at assigned locations, spending no more than approximately ten percent of his day
8 overseeing the work of other guards, performing a variety of cleaning duties, such as, but not limited
9 to washing company vehicles, and filling in for other guards as needed. Based on information and
10 belief, at times, PLAINTIFF was compensated on an hourly basis but only for time counted by
11 DEFENDANTS as hours worked.

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

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

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

27 30. Based on information and belief, Aggrieved Employees were not paid for all hours
28 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours

1 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
2 the clock work policies and/or practices. For example, DEFENDANTS' pay records, payroll
3 registers and/or wage statements issued to PLAINTIFF evidence rounding to at least the nearest
4 quarter, half and/or whole hour. For example, DEFENDANTS' payroll register for PLAINTIFF for
5 workweek ending on July 13, 2022, shows an exact 36.00 regular hours worked and precisely .50
6 overtime hours worked; similarly, DEFENDANTS' payroll register for PLAINTIFF for workweek
7 ending on July 20, 2022, shows an exact 27.50 regular hours worked and precisely 9.00 overtime
8 hours worked and precisely 2.75 double time hours worked; similarly, DEFENDANTS' payroll
9 register for PLAINTIFF for workweek ending on July 27, 2022, shows precisely 38.00 regular hours
10 worked and precisely 2.25 overtime hours worked; likewise, DEFENDANTS' payroll register for
11 PLAINTIFF for workweek ending on August 3, 2022 shows precisely 27.25 regular hours worked
12 and precisely 1.25 overtime hours worked.

13 31. Based on information and belief, DEFENDANTS rounded PLAINTIFF's hours
14 worked to at least the nearest quarter, half and/or whole hour during most if not all pay periods
15 during the relevant period. Based on further information, DEFENDANTS also rounded other
16 Aggrieved Employees total hours worked to at least the nearest quarter, half and/or whole hour,
17 during most if not all pay periods during the relevant period, resulting in the substantial
18 underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

19 32. Based on information and belief, at times, DEFENDANTS' electronic time-keeping
20 system/app malfunctioned such that Aggrieved Employees were required to either reinitiate and/or
21 otherwise troubleshoot the system/app and/or wait for the system/app to boot prior to being able to
22 clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from
23 meal periods, resulting in off-the-clock work and the underpayment of wages owed to Aggrieved
24 Employees. Based on information and belief, Aggrieved Employees experienced the same issues
25 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
26 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
27 Aggrieved Employees/ Based on information and belief, Aggrieved Employees were also required
28 to complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-

1 related phone calls and/or messages they received to their phones and were required to respond to
2 outside of their scheduled shift times, including but not limited to, communications from supervisors
3 and/or other Aggrieved Employees regarding scheduling and/or other work tasks, resulting in the
4 underpayment of wages owed to Aggrieved Employees.

5 33. Based on further information and belief, Aggrieved Employees were not paid for
6 additional pre-shift and/or post-shift off-the-clock work, work during unpaid meal periods and/or
7 other work outside their scheduled shift times, including but not limited to, all time spent traveling
8 between assigned job sites/work locations, all time spent bestowing personal items in and/or
9 retrieving personal items from employee lockers and/or storage areas, all time spent compiling,
10 retrieving, maintaining and/or returning work equipment/tools and/or all time spent donning and
11 doffing uniforms/work clothing/personal protective/safety gear (e.g., protective vests, hats, face
12 masks, gloves, work boots and/or other mandated work clothing/gear) during meal periods, before
13 the start of a scheduled shift, and after completing a scheduled shift resulting in the underpayment
14 of wages owed to Aggrieved Employees.

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

20 35. Based in information and belief, DEFENDANTS implemented a time-rounding
21 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
22 compensable time because the time-rounding system implemented by DEFENDANTS would
23 almost always, if not always, result in understating actual compensable work time. For example, as
24 explained above, DEFENDANTS' pay records and/or wage statements for PLAINTIFF evidence
25 rounding of PLAINTIFF's hours worked to at least the nearest quarter, half and/or whole hour,
26 resulting in the consistent underpayment of minimum wages owed to PLAINTIFF. Based on
27 information and belief, DEFENDANTS systemically shaved time off of other Aggrieved Employees
28 workdays by rounding other Aggrieved Employees' hours worked to at least the nearest quarter,

1 half and/or whole hour during most if not all pay periods, resulting in the consistent underpayment
2 of minimum wages owed to those Aggrieved Employees.

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

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

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

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

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

1 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
2 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
3 completely. For example, PLAINTIFF was consistently required to work through his meal periods
4 and/or had his meal periods interrupted/cut short due to the need to respond to work-related
5 communications and/or return to work as needed to provide coverage and/or complete other work
6 tasks. Any meal periods afforded PLAINTIFF were typically late (i.e. had to be taken after working
7 more than five hours). At times, including but not limited to, during the approximately last three
8 months of his employment, DEFENDANTS placed PLAINTIFF at a post that was understaffed
9 and/or failed to have sufficient guard coverage. Due to this, PLAINTIFF was rarely if ever afforded
10 a full thirty-minute meal period during his shifts, including but not limited to, from approximately
11 November 2022 through January 2023. Moreover, PLAINTIFF was required to remain under
12 DEFENDANTS' control and/or otherwise on duty during any meal periods, including but not limited
13 to, during the last three months of his employment, due to DEFENDANTS' policy of requiring
14 PLAINTIFF to remain on the worksite premises and monitor his phone for work communications
15 during purportedly off-duty, unpaid meal breaks.

16 41. Moreover, during his employment, PLAINTIFF was placed at a post that was
17 understaffed and/or did not have sufficient guard coverage. Due to this, PLAINTIFF had to remain
18 on the worksite premises/could not leave his post at any time, including but not limited to, during
19 purportedly off-duty, unpaid meal breaks.

20 42. Moreover, PLAINTIFF had to monitor his phone for work-related communications
21 during purportedly off-duty, unpaid meal breaks. Throughout their employment, PLAINTIFF and
22 other Aggrieved Employees regularly worked at locations that were understaffed.

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

28 44. Based on information and belief, DEFENDANTS implemented policies and/or

1 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
2 during unpaid meal periods.

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

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

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

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

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

27 50. Based on information and belief, DEFENDANTS had actual and/or constructive
28 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods

1 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
2 violation of California's meal period laws.

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

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

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

18 54. Based on information and belief, DEFENDANTS did not have a have a compliant
19 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
20 practice. For example, due to the nature and constraints of his duties, understaffing and/or lack of
21 coverage, PLAINTIFF was consistently required to work through his owed rest periods. Moreover,
22 PLAINTIFF was rarely if ever relieved of all duties and employer control during any rest periods.
23 For example, PLAINTIFF was required to monitor a work communication device and remain at his
24 post/tethered to his worksite throughout the entirety of his shift, during most if not all shifts he
25 worked, including but not limited to, for example, during all shifts worked from approximately
26 November 2022 through January 2023.

27 55. Moreover, on information and belief, DEFENDANTS failed to authorize and permit
28 rest periods that were a “net” ten minutes in a suitable rest area and instead, to the extent rest periods

1 were provided at all, limited Aggrieved Employees to only ten-minute rest periods, requiring them
2 to be back at their workstations within ten minutes of leaving, in violation of California rest period
3 law. DEFENDANTS' failure to communicate that the rest period is a net ten minutes deprived
4 Aggrieved Employees of their rights to a full rest period, as such as policy only relieves Aggrieved
5 Employees from their workstation for ten minutes to travel to and from a rest area and be back at
6 the workstation by the end of that ten minutes.

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

11 57. Moreover, based on information and belief, DEFENDANTS failed to provide any
12 form of a third rest period on shifts lasting longer than ten hours. For example, when PLAINTIFF
13 worked shifts lasting longer than ten hours, he was not afforded any version of a third rest period.

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

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

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

27 61. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
28 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied

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

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

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

19 64. Moreover, based on information and belief, DEFENDANTS issued wage statements
20 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among
21 other things, failing to list the correct name and/or address of the legal entity that is the employer,
22 in violation of Labor Code section 226(a)(8). For example, based on information and belief, wage
23 statements issued to Aggrieved Employees identify “DSI Security Services” and/or “DSI Security
24 Services Inc.” and/or “DSI” as the name of the legal entity that is the employer. However, based on
25 information and belief, there are no legal entity/entities named “DSI Security Services” and/or DSI
26 Security Services Inc.” and/or “DSI” in existence. As such, DEFENDANTS issued wage statements
27 to Aggrieved Employees that failed to list the correct name and/or address of the legal entity that is
28 the employer, in violation of Labor Code section 226(a)(8).

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

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

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

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

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

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

1 statements.

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

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

14 73. Based on information and belief, DEFENDANTS shifted the costs of doing business
15 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
16 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
17 including but not limited to including but not limited to, purchase and/or maintenance of
18 uniforms/work clothing/shoes/protective equipment/safety gear and/or the use of Aggrieved
19 Employees' personal mobile phone and data usage for work-related purposes to receive and respond
20 to work related messages and/or phone calls. For example, PLAINTIFF and other Aggrieved
21 Employees were required to download a timekeeping app on their personal cell phones and use it
22 on a daily basis to clock in and out for their shifts, among other work-related uses, however,
23 DEFENDANTS failed to provide any and/or full reimbursement for use of Aggrieved Employees'
24 personal mobile phone/device and data usage for work-related purposes.

25 74. DEFENDANTS also failed to reimburse Aggrieved Employees for the cost of
26 purchasing their own work tools, including but not limited to, hand tools and/or equipment
27 Aggrieved Employees required to perform their assigned job duties. For example, DEFENDANTS
28 required that PLAINTIFF purchase soap and a vacuum for washing/cleaning the company vehicles,

1 yet DEFENDANTS did not reimburse PLAINTIFF at all for these business expenses. Based on
2 information and belief, DEFENDANTS have a policy and/or practice of failing to reimburse other
3 Aggrieved Employees for the cost of purchasing, repairing and/or maintaining work tools and/or
4 equipment required to perform their assigned job duties.

5 75. Based on information and belief, other Aggrieved Employees were/are required to
6 use their personal vehicles for work purposes without receiving any reimbursement from
7 DEFENDANTS and /or full reimbursement from DEFENDANTS, including but not limited to,
8 reimbursement at the applicable legally mandated Internal Revenue Service (IRS) per mile
9 compensation rate. For example, Aggrieved Employees were required to use their personal vehicles
10 for work-related purposes, such as, but not limited to, driving between DEFENDANTS' multiple
11 facilities/offices/locations and/or job sites but were not provided any and/or full reimbursement from
12 DEFENDANTS for the expenses Aggrieved Employees incurred in connection therewith, including
13 but not limited to, mileage, cost of gas, and/or vehicle wear and tear. For example, PLAINTIFF was
14 required to use his personal vehicle to drive between job sites and/or for other work purposes but
15 was only provided a gas card for some fuel reimbursement and not reimbursed for all vehicle-related
16 expenses he incurred including without limitation, reimbursement for mileage and/or wear and tear
17 on his personal vehicle. Based on information and belief, other Aggrieved Employees were/are
18 required to use their personal vehicles for work purposes without receiving any reimbursement from
19 DEFENDANTS and /or full reimbursement from DEFENDANTS, including but not limited to,
20 reimbursement at the applicable legally mandated Internal Revenue Service (IRS) per mile
21 compensation rate.

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

27 77. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
28 for all reasonable expenses associated with carrying out their duties required that Aggrieved

1 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
2 2802.

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

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

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

26 81. Upon information and belief, DEFENDANTS failed and continue to fail to comply
27 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
28 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick

1 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
2 wages.

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

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

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

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

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

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

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

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

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

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

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

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

25 92. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

26 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

27 93. Labor Code section 432.5 provides that "no employer...shall require any employee
28 or applicant for employment to agree, in writing, to any term or condition which is known by such

1 employer...to be prohibited by law.” Based on information and belief, DEFENDANTS required
2 PLAINTIFF and other Aggrieved Employees to agree in writing to unlawful conditions of
3 employment including but not limited, unlawful non-compete/non-solicitation agreements and/or
4 unlawful confidentiality/nondisclosure agreements and/or unlawful criminal and/or financial checks
5 as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

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

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

1 background check.

2 97. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
3 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
4 section 432.5.

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

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

13 100. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
14 condition of employment, DEFENDANTS violated Labor Code section 432.5.

15 Unlawful Inquires into Criminal History

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

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

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

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

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

104. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

Failure to Keep Accurate Records

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

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

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

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

108. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee’s dates of employment; the employee’s hourly rates

³ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil 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 and the corresponding number of hours worked by the employee at each hourly rate, when the
2 employee begins and ends each work period (including meal periods) and split intervals; total hours
3 worked by the employee; all deductions; gross wages earned; and net wages earned.

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

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

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

26 **Meal Period Violations**

27 112. California law requires employers to provide employees a duty-free, uninterrupted
28 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and

1 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and
2 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
3 *Court* (2012) 53 Cal.4th 1004.

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

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

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

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

28 117. Based on information and belief, DEFENDANTS had and continue to have a policy

1 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
2 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
3 Aggrieved Employees did not receive compliant meal periods.

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

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

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

15 121. These unlawful meal period policies and practices result in violations of Labor Code
16 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
17 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
18 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
19 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

20 **Rest Period Violations**

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

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

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

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

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

28 126. As a result, PLAINTIFF and Aggrieved Employees did not receive legally compliant

1 first, second, or third rest periods as required by California law.

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

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

11 **Minimum and Overtime Wage Violations**

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

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

25 131. As explained above, DEFENDANTS violated California's minimum and overtime
26 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
27 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
28 start and end times and meal period start and end times), payment according to scheduled hours

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

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

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

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

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

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

27 **Statutory Wage Violations**

28 137. California Labor Code section 223 makes it unlawful for an employer to secretly pay

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

11 **Refusal to Make Payment**

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

20 **Standard Conditions of Labor Violations**

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

26 _____
27 ⁴ 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 minimum/overtime wages and other violations described herein result in separate violations of
2 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
3 1197.1 and 2699.

4 **Business Expense Violations**

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

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

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

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

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

1 145. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and other Aggrieved
2 Employees have suffered injury in that they were not completely reimbursed as mandated by
3 California law.

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

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

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

15 **Wage Statement Violations**

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

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

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

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

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

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

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

1 entity that is the employer.

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

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

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

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

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

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

24 161. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
25 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
26 during which the statute provisions were violated. ⁵

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⁵ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 **Seating Violations**

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

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

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

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

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

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

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

25 167. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
26 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
27 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
28 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections

1 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
2 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
3 Aggrieved Employee, results in a separate civil penalty.

4 **Sick Leave Violations**

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

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

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

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

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

1 wages.

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

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

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

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

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

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

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

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

28 **Untimely Payment of Final Wages**

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

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

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

20 182. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
21 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
22 256.

23 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

1 agreements and/or unlawful confidentiality/nondisclosure agreements and/or unlawful criminal
2 and/or financial checks as a condition of obtaining and/or continuing employment in violation of
3 Labor Code section 432.5.

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

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

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

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

28 188. Based on further information and belief, DEFENDANTS knew that requiring

1 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
2 condition of obtaining and/or holding employment was unlawful.

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

5 Unlawful Inquires into Criminal History

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

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

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

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

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

1 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
2 violations without a civil penalty recoverable under the PAGA, all in the default
3 amounts provided by Labor Code section 2699(f).

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

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

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PRAYER FOR RELIEF

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

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

Dated: June 6, 2023

CROSNER LEGAL, PC

By: 
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Sepideh Ardestani, Esq
Attorneys for Plaintiff
MIGUEL JONAS RUIZ