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

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF SANTA CLARA**

12 JAIRO REYES BONILLA, on behalf of the  
State of California, and others similarly  
situated and aggrieved,

13 Plaintiff,

14  
15 v.

16 SAN FRANCISCO-B INC., a California  
17 Corporation; LITHIA MOTORS, INC., an  
Oregon Corporation; and DOES 1-100,  
18 inclusive,

19 Defendants.

Case No.: **23CV415840**

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

1 Plaintiff, JAIRO REYES BONILLA (“PLAINTIFF”), an individual on behalf of  
2 PLAINTIFF, the State of California, and all other Aggrieved Employees (as defined below), hereby  
3 files this Complaint against Defendants SAN FRANCISCO-B INC., a California Corporation;  
4 LITHIA MOTORS, INC., an Oregon Corporation; and DOES 1-100, inclusive, (collectively  
5 referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges  
6 as follows:

### 7 **INTRODUCTION**

8 1. This is a representative action filed by PLAINTIFF on behalf of other Aggrieved  
9 Employees and the State of California against DEFENDANTS, pursuant to California’s Private  
10 Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties (75%  
11 payable to the Labor and Workforce Development Agency and 25% payable to other 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 on behalf of other  
15 Aggrieved Employees and the State of California pursuant to California statutes, including but not  
16 limited to the PAGA, and decisional law and regulations.

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

### 23 **THE PARTIES**

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

26 5. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.  
27 PLAINTIFF worked for DEFENDANTS as an auto detailer and/or similar title from in or around  
28 June 2020 through in or around April 2022.

6. DEFENDANTS are a California corporation and/or an Oregon Corporation that all relevant times, were authorized to do business within the State of California and are doing business in the State of California.

7. DEFENDANTS own, operate, or otherwise manage car dealership(s) in California, including but not limited to the dealership/location operating as “BMW of San Francisco” which provides auto repair and maintenance services. DEFENDANTS’ “BMW of San Francisco” location also sells and leases vehicles. Based on information and belief, DEFENDANTS operate other dealerships and/or service locations or facilitates throughout California including but not limited to in the county of Santa Clara, California.

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

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

## JOINT LIABILITY

10. Under California law, the definition of the terms “to employ” are broadly construed

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

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

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

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

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

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

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

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

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

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

## PAGA ALLEGATIONS

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

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

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 other  
4 Aggrieved Employees, the civil penalties provided by PAGA solely on behalf of other Aggrieved  
5 Employees and the State of California, plus reasonable attorney's fees and costs. PLAINTIFF has  
6 standing to bring a PAGA cause of action on behalf of the State and all other Aggrieved Employees,  
7 as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by one or more of  
8 the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745,  
9 757; *See also Johnson v. Maxim Healthcare Servs.*, (2021) 66 Cal.App.5th 924, 929 - 930 A PAGA  
10 plaintiff has authority to seek penalties for all known violations committed by the employer –  
11 regardless of whether Plaintiff experienced all violations personally. *Huff*, at 760-761.

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

13 21. PLAINTIFF, on March 1, 2023, through counsel, gave written notice by online filing  
14 with the California Labor and Workforce Development Agency (“LWDA”) informing it that  
15 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged  
16 in this Complaint (“PAGA Notice”).

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

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

#### 23 **FACTUAL ALLEGATIONS**

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

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

1 PLAINTIFF worked for DEFENDANTS as an auto detailer and/or similar title from in or around  
2 June 2020 through in or around April 2022.

3 26. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an  
4 hourly basis for time counted by DEFENDANTS as hours worked. DEFENDANTS paid  
5 PLAINTIFF for “clocked” hours worked regardless of whether PLAINTIFF worked beyond and/or  
6 outside his scheduled shift and/or outside of the “clocked” hours. DEFENDANTS knew that  
7 PLAINTIFF completed off-the-clock work outside of his scheduled shift and/or completed work  
8 during unpaid meal periods and failed to compensate PLAINTIFF for such hours worked.  
9 Additionally, PLAINTIFF received bonus compensation for services performed including but not  
10 limited to non-discretionary bonuses earned for completing the following services: Full Body  
11 Treatment, Freshen Up Treatment, Luxury Wash, Car Wash. Based on information and belief, at  
12 times PLAINTIFF was paid per service completed. Based on information and belief,  
13 DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate of pay  
14 for purposes of calculating all owed overtime and for purposes of calculating the owed meal and  
15 rest period premiums.

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

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

25 29. Based on information and belief, DEFENDANTS implemented a policy and/or  
26 practice of rounding meal period start and end times and/or automatically deducting at least thirty  
27 minutes per shift for meal periods, despite having actual and/or constructive knowledge that  
28 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during

1 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving  
2 PLAINTIFF and Aggrieved Employees of all wages owed.

3         30. Based on information and belief, Aggrieved Employees were not paid for all hours  
4 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours  
5 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-  
6 the clock work policies and/or practices. For example, at times PLAINTIFF was required to  
7 complete his job duties after clocking out for a shift. PLAINTIFF was not compensated for such  
8 off-the-clock work time. At other times, PLAINTIFF was required to continue working during  
9 purported meal periods and/or was interrupted during purported meal periods and was not  
10 compensated for such work time. Moreover, as explained above, DEFENDANTS paid PLAINTIFF  
11 for "clocked" hours worked regardless of whether PLAINTIFF worked beyond and/or outside his  
12 scheduled shift and/or outside of the "clocked" hours. DEFENDANTS knew that PLAINTIFF  
13 completed off-the-clock work outside of his scheduled shift and/or completed work during unpaid  
14 meal periods and failed to compensate PLAINTIFF for such hours worked. Based on information  
15 and belief, at times, PLAINTIFF was paid per service completed irrespective of the number of hours  
16 worked to complete such service.

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

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

26         33. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,  
27 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal  
28 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of

1 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages  
2 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than  
3 forty (40) hours in a week.

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

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

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

18 37. For example, PLAINTIFF received bonus compensation for services performed  
19 including but not limited to non-discretionary bonuses earned for completing the following services:  
20 Full Body Treatment, Freshen Up Treatment, Luxury Wash, Car Wash. Based on information and  
21 belief, DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate  
22 of pay.

23 38. **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 frequently unable to take timely, off-duty thirty-minute  
4 meal periods due to the need to complete his job duties including but not limited to  
5 cleaning/detailing vehicles. At times, PLAINTIFF was interrupted during purported meal periods  
6 and/or was called on his personal cell phone and was required to return to work during his purported  
7 meal periods. DEFENDANTS required PLAINTIFF to monitor his cell phone and be responsive to  
8 calls from DEFENDANTS at all times, including but not limited to during purported meal periods.

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

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

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

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

27         43. Moreover, based on information and belief, Aggrieved Employees who worked shifts  
28 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

1 For example, when PLAINTIFF worked more than ten hours in a shift, PLAINTIFF was not  
2 provided with a second meal period.

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

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

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

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

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

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

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

4 50. Based on information and belief, DEFENDANTS did not have a have a compliant  
5 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in  
6 practice. For example, PLAINTIFF did not receive rest periods and/or was not afforded the  
7 opportunity to take rest periods. PLAINTIFF was required to continue working during any purported  
8 rest periods and/or was required to remain on DEFENDANTS' premises in the event he was required  
9 to return to work and/or complete his job duties.

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

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

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

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

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

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

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

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

21           59.     Based on information and belief, DEFENDANTS issued wage statements that failed  
22 to list the number of piece rate units completed/earned during the pay period and the applicable rate  
23 of pay for each piece rate unit.

24           60.     Based on information and belief, DEFENDANTS issued wage statements that failed  
25 to list the number of non-discretionary bonuses earned and failed to list the applicable rate for each  
26 non-discretionary bonus. Instead, wage statements list the total amount of non-discretionary bonuses  
27 earned without listing the number of bonuses and/or the rate for each bonus, thereby making it  
28 impossible for PLAINTIFF and other Aggrieved Employees to know whether they received all owed

1 non-discretionary bonuses/compensation.

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

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

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

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

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

23 66. DEFENDANTS have failed and continue to fail to keep accurate and complete  
24 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal  
25 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and  
26 employer control during unpaid meal periods, failure to record the true start and end times of meal  
27 periods, shift start times and shift end times, and other off-the-clock work policies and practices  
28 described herein.

1           **67. Failure to Provide Written Commission Agreements.** Labor Code section 2751  
2 requires that all commission contracts "be in writing and . . . set forth the method by which the  
3 commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute,  
4 employers must also "give a signed copy of the contract to every employee who is a party [to the  
5 contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section 2751(b).

6           **68.** Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,  
7 Aggrieved Employees who were compensated on a commission basis with proper written  
8 commission agreements, in violation of Labor Code section 2751.

9           **69. Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an  
10 employer to pay employees compensated on a piece-rate basis separately for rest and recovery  
11 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an  
12 employer to include on the wage statements for these employees the total hours of compensable rest  
13 and recovery period, the total hours for other non-productive time, the rates of compensation for  
14 these hours, and the gross wages paid for these hours. In addition, the statute requires that employees  
15 shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the  
16 higher of: (i) an average hourly rate determined by dividing the total compensation for the  
17 workweek, exclusive of compensation for rest and recovery periods and any premium compensation  
18 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,  
19 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to  
20 employees compensated on a commission basis.

21           **70.** Based on information and belief, DEFENDANTS failed to compensate Aggrieved  
22 Employees who were paid solely on a piece rate and/or commission basis separately for the rest  
23 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based  
24 on information and belief, DEFENDANTS further failed to include this information on Aggrieved  
25 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section  
26 226.2.

27           **71. Unreimbursed Business Expenses.** Based on information and belief,  
28 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses

1 as a direct consequence of the performance of their job duties without providing reimbursement, in  
2 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other  
3 Aggrieved Employees were improperly required to provide and maintain work tools that are  
4 supposed to be the responsibility of the employer.

5 72. Based on information and belief, DEFENDANTS shifted the costs of doing business  
6 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on  
7 information and belief DEFENDANTS required Aggrieved Employees by requiring them to pay  
8 for its business expenses, including but not limited to, uniforms and/or the use of Aggrieved  
9 Employees' personal mobile phone and data usage for work related purposes including but not  
10 limited to receiving and responding to work related messages and/or phone calls. Based on  
11 information and belief, Aggrieved Employees were not reimbursed for the cost of using their  
12 personal phone for work related purposes and/or the cost of purchasing and/or maintaining work  
13 uniforms/clothing. For example, PLAINTIFF was required to use his personal cell phone for work  
14 related purposes and often received work-related communications to his personal phone.

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

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

24 75. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed  
25 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS  
26 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the  
27 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the  
28 accrued sick leave hours on the correct number of hours worked (as a result of the

1 rounding/automatic deduction policies and practices for meal periods and/or shift start and end  
2 times/other required off-the-clock work including but not limited to unpaid meal periods) and by  
3 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but  
4 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary  
5 compensation into the sick leave pay rate calculation.

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

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

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

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

28       80. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides

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

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

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

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

23       **84. Unlawful Agreements-Unlawful Criminal History Inquiries.**

24       Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

25       **85.** Based on information and belief, DEFENDANTS required Aggrieved Employees to  
26 agree in writing to unlawful conditions of employment including but not limited to unlawful  
27 criminal and/or financial checks as a condition of obtaining and/or continuing employment in  
28 violation of Labor Code section 432.5.

1           86.     Based on information and belief, DEFENDANTS ordered unlawful financial credit  
2 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved  
3 Employees to provide ongoing written consent to the unlawful credit checks as a condition of  
4 employment, in violation of California and Federal law, which results in a further violation of Labor  
5 Code section 432.5.

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

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

25           89.     By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or  
26 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code  
27 section 432.5.

28           90.     Based on further information and belief, DEFENDANTS also required Aggrieved

1 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct  
2 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA  
3 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by  
4 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

5 91. Based on further information and belief, DEFENDANTS knew that requiring  
6 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a  
7 condition of obtaining and/or holding employment was unlawful.

8 92. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a  
9 condition of employment, DEFENDANTS violated Labor Code section 432.5.

10 Unlawful Inquires into Criminal History

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

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

20 Unlawful PAGA Waiver

21 95. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring  
22 Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited  
23 to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

24 96. An action pursuant to PAGA “...is a representative action on behalf of the state”  
25 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements  
26 purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and  
27 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384  
28 (“We conclude that where, as here, an employment agreement compels the waiver of representative

1 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

2 97. Moreover, the California Supreme Court has ruled that a court cannot compel  
3 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an  
4 individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is  
5 no individual component to a PAGA action because ‘every PAGA action ... is a representative  
6 action on behalf of the state.’”)

7 98. Upon information and belief, DEFENDANTS required PLAINTIFF and other  
8 Aggrieved Employees to agree in writing to waive their right to a trial of representative actions  
9 including PAGA claims in violation of California law. By requiring PLAINTIFF and other  
10 Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS required  
11 written agreement to an unlawful provision as a condition of employment which is a violation of  
12 labor code section 432.5.

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

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

21 100. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

22 101. PLAINTIFF brings this cause of action as a representative action solely on behalf of  
23 other Aggrieved Employees and the State of California.

24 **Failure to Keep Accurate Records**

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

103. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate

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

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

11 **Meal Period Violations**

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

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

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

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

1 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a  
2 rebuttable presumption arises that the employee was not relieved of duty and no meal period was  
3 provided”).

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

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

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

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

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

27 113. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal  
28 periods in violation of California law and/or failed to pay the proper meal period premium for failure

1 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift  
2 differential pay and/or other non-discretionary compensation into the regular rate or compensation  
3 for purposes of calculating the owed meal period premium.

4 114. These unlawful meal period policies and practices result in violations of Labor Code  
5 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject  
6 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable  
7 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §  
8 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

9 **Rest Period Violations**

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

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

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

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

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

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

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

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

28 **Minimum and Overtime Wage Violations**

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

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

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

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

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

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

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

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

16 **Failure to Provide Written Commission Agreements**

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

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

25 **Violation of Labor Code Section 226.2**

26 132. Labor Code section 226.2 requires an employer to pay employees compensated on a  
27 piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any  
28 piece-rate pay. This statute further requires an employer to include on the wage statements for these

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

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

#### 15 **Statutory Wage Violations**

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

#### 27 **Refusal to Make Payment**

28 135. Labor Code section 216 declares unlawful an employer's refusal to pay wages due

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

8 **Standard Conditions of Labor Violations**

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

17 **Business Expense Violations**

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

24 138. Among other things, under California law, when employees must use their personal  
25 cellphones for work-related purposes, the employer must reimburse them for a reasonable

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

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

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

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

13 141. DEFENDANTS' failure to provide PLAINTIFF and the Aggrieved Employees with  
14 full reimbursement for all reasonable expenses associated with carrying out their duties required  
15 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business  
16 expenses in violation of Labor Code section 2802.

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

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

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

27 145. Despite being aware of these business expenses, DEFENDANTS failed to reimburse  
28 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor

1 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor  
2 Code § 2802 and the applicable Wage Order.

3 **Wage Statement Violations**

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

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

21 148. Moreover, due to violations detailed above, including but not limited to,  
22 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide  
23 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,  
24 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish  
25 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed  
26 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based  
27 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary  
28 compensation earned during the pay period into the regular rate of pay for purposes of calculating

1 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of  
2 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

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

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

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

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

1           156. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and  
2 Aggrieved Employees with accurate, itemized wage statements.

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

12           158. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.  
13 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period  
14 during which the statute provisions were violated.<sup>3</sup>

15           **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12           **Untimely Payment of Final Wages**

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

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

26           172. Based in information and belief, DEFENDANTS failed and continue to fail to timely  
27 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in  
28 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF

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

4 173. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These  
5 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or  
6 256.

7 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

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

1 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

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

5 178. Based on further information and belief, DEFENDANTS required Aggrieved  
6 Employees to agree in writing to provide DEFENDANTS with ongoing consent 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.

10 179. 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.

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

15 Unlawful Inquires into Criminal History

16 181. 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.

20 182. 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.

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

1 disclose arrests and/or convictions as a condition of employment.

2 Unlawful PAGA Waiver

3 184. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring  
4 PLAINTIFF and other Aggrieved Employees to agree in writing to other unlawful agreements,  
5 including but not limited to, an unlawful waiver of PAGA and/or representative actions as a  
6 condition of employment.

7 185. An action pursuant to PAGA “...is a representative action on behalf of the state”  
8 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements  
9 purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and  
10 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384  
11 (“We conclude that where, as here, an employment agreement compels the waiver of representative  
12 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

13 186. Moreover, the California Supreme Court has ruled that a court cannot compel  
14 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an  
15 individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is  
16 no individual component to a PAGA action because ‘every PAGA action ... is a representative  
17 action on behalf of the state.’”)

18 187. Upon information and belief, DEFENDANTS required PLAINTIFF and other  
19 Aggrieved Employees to agree in writing to waive their right to a trial of PAGA claims in violation  
20 of California law. By requiring PLAINTIFF and other Aggrieved Employees to agree, in writing,  
21 to an unlawful PAGA waiver, DEFENDANTS required written agreement to an unlawful provision  
22 as a condition of employment which is a violation of labor code section 432.5.

23 188. Under the provisions of PAGA and the above mentioned Labor Code sections,  
24 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,  
25 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,  
26 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all  
27 interpretations of these laws by California Courts and administrative bodies, as well as any other  
28 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 1 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the  
2 relevant California Labor Code provisions listed herein only if permitted by the  
3 PAGA statute, pursuant to Labor Code section 2699(a); and  
4 b. Default PAGA penalties for any violation of the enumerated list of Labor Code  
5 violations without a civil penalty recoverable under the PAGA, all in the default  
6 amounts provided by Labor Code section 2699(f).  
7 c. The proper measure of penalties under PAGA is the number of violations,  
8 whether those violations were committed as against PLAINTIFF or any  
9 Aggrieved Employee, whether a party to this action or not.

10 189. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,  
11 PLAINTIFF is entitled to recover civil penalties on behalf of other Aggrieved Employees and the  
12 State of California, costs, and attorney's fees.

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**PRAYER FOR RELIEF**

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

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

Dated: May 11, 2023

**CROSNER LEGAL, PC**

By:   
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