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11 on behalf of the State of California,

12 and others similarly situated and aggrieved

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF LOS ANGELES**

15 DAVIDE GILIBERTI, on behalf of the State
16 of California, and others similarly situated
17 and aggrieved,

18 Plaintiff,

19 v.

20 SOUTH BAY MOTORS, LLC, a California
21 Limited Liability Company; SULLIVAN
22 AUTOMOTIVE GROUP, LLC, a Delaware
23 Limited Liability Company; LACARGUY
24 WHOLESALE DIVISION, INC., a
25 California Corporation; and DOES 1-100,
26 inclusive,

27 Defendants.

Case No.: 23STCV15499

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

1 Plaintiff, DAVIDE GILIBERTI (“PLAINTIFF”), an individual on behalf of PLAINTIFF,
2 the State of California, and all other Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants SOUTH BAY MOTORS, LLC, a California Limited Liability
4 Company; SULLIVAN AUTOMOTIVE GROUP, LLC, a Delaware Limited Liability Company;
5 LACARGUY WHOLESALE DIVISION, INC., a California Corporation; ; and DOES 1-100,
6 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
7 believes and thereon alleges as follows:

8 **INTRODUCTION**

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

14 **JURISDICTION AND VENUE**

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

17 3. Venue is proper in this judicial district and the County of Los Angeles 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 is a former employee of DEFENDANTS. PLAINTIFF worked for
27 DEFENDANTS as a salesperson, sales consultant, customer service representative and/or similar
28 title(s) and/or position(s), from in or around October 2021 through in or around mid-July 2022.

1 DEFENDANTS regularly assigned PLAINTIFF to work out of one of DEFENDANTS' locations,
2 facilities, and/or dealerships located in Hawthorne, California, which operated/operates under the
3 name Porsche South Bay. PLAINTIFF regularly worked at least seven (7) to nine- and one-half (9
4 ½) hours per day, at least five (5) to six (6) days per week. 7-9.5 hours per day, 5-6 days a week.
5 DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours
6 worked. PLAINTIFF also earned commissions (e.g., a percentage of the invoice price of vehicle
7 sales) and/or other non-discretionary compensation.

8 6. DEFENDANTS are a California corporation and/or limited liability company and/or
9 a Delaware limited liability company that, at all relevant times, were authorized to do business
10 within the State of California and are doing business in the State of California.

11 7. DEFENDANTS own, operate and/or otherwise manage automotive dealerships
12 and/or automotive dealership groups, with multiple locations, facilities and/or dealerships in
13 California, including but not limited to, locations, facilities and/or dealerships operating under the
14 following names in the following cities in California: Audi Pacific in Torrance, California; Genesis
15 Santa Monica, Honda Santa Monica, Hyundai Santa Monica, Lexus Santa Monica, Subaru Santa
16 Monica, Toyota Santa Monica, and Volkswagen Santa Monica, in Santa Monica, California; Pacific
17 Volkswagen, Porsche South Bay, and Subaru Pacific, in Hawthorne, California; Honda Lancaster
18 and Subaru Antelope Valley in Lancaster, California; and Toyota Hollywood in Hollywood,
19 California. DEFENDANTS regularly assigned PLAINTIFF to work out of one of DEFENDANTS'
20 locations, facilities, and/or dealerships located in Hawthorne, California, which operated/operates
21 under the name Porsche South Bay. The true names and capacities of the DOE Defendants sued
22 herein as DOES 1 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore
23 sues each such Defendant by said fictitious names. Each of the Defendants designated herein as a
24 DOE is legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court
25 to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such
26 identities become known.

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

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

9 **JOINT LIABILITY**

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

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

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

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

19 12. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
20 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
21 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
22 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees’
23 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
24 considered the joint employers of PLAINTIFF and Aggrieved Employees. For example, based on
25 information and belief, each of the DEFENDANTS maintains the same agent for service of process
26 and/or principal place of business as provided to the California Secretary of State and/or maintains
27 some of the same attorneys and/or human resources personnel to oversee employment-related
28 matters. Moreover, various documents contained in PLAINTIFF’s personnel file, such as but not

1 limited to, employment policy documents and/or human resources documents and/or job
2 performance related documents and/or human resources' email signature lines identify the following
3 entity as the name of PLAINTIFF's employer: "Sullivan Automotive Group, LLC". Still other
4 documents contained in PLAINTIFF's personnel file, including without limitation, employment
5 policies related to compensation and/or email addresses to DEFENDANTS' human resources
6 department/personnel provided to PLAINTIFF identify "LAcarguy" and/or "lacarguy" as the name
7 of PLAINTIFF's employer. Based on information and belief, other employment-related documents
8 contained in PLAINTIFF's personnel file and/or pay records, including but not limited to,
9 compensation-related documents and/or agreements and/or wage statements issued by
10 DEFENDANTS to PLAINTIFF identify the following entity and/or entities as the legal name of
11 PLAINTIFF's employer: "South Bay Motors, LLC" and/or "South Bay Motors, LLC (dba Porsche
12 South Bay)."

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

27 14. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
28 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS

1 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
2 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
3 PLAINTIFF seeks relief in this Complaint.

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

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

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

16 **PAGA ALLEGATIONS**

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

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

25 19. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
26 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
27 limitations period and suffered one or more of the Labor Code violations set forth herein.
28 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved

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

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

9
10 20. PLAINTIFF, on April 26, 2023 through counsel, gave written notice by online filing
11 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
12 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
13 in this Complaint (“PAGA Notice”).

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

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

20 **FACTUAL ALLEGATIONS**

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

25 24. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
26 DEFENDANTS as a salesperson, sales consultant, customer service representative and/or similar
27 title(s) and/or position(s), from in or around October 2021 through in or around mid-July 2022.
28 DEFENDANTS regularly assigned PLAINTIFF to work out of one of DEFENDANTS’ locations,

1 facilities, and/or dealerships located in Hawthorne, California, which operated/operates under the
2 name Porsche South Bay. PLAINTIFF regularly worked at least seven (7) to nine- and one-half (9
3 ½) hours per day, at least five (5) to six (6) days per week. 7-9.5 hours per day, 5-6 days a week.
4 DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours
5 worked. PLAINTIFF also earned commissions (e.g., a percentage of the invoice price of vehicle
6 sales) and/or other non-discretionary compensation.

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

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

20 27. Based on information and belief, Aggrieved Employees were not paid for all hours
21 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
22 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
23 the clock work policies and/or practices. For example, PLAINTIFF was frequently required to
24 complete work tasks before clocking in for work and/or after clocking out of work, including but
25 not limited to, communicating with customers/clients, delivering vehicles to customer's/clients'
26 residences and/or completing other work off the clock as DEFENDANTS did not want PLAINTIFF
27 to continue working overtime hours. As such, PLAINTIFF was frequently forced to complete his
28 work tasks off-the-clock in order to avoid and/or reduce the number of overtime hours worked.

1 DEFENDANTS knew that the assigned workload would require PLAINTIFF to work well over
2 eight (8) hours in a shift and/or more than forty hours in a week and knew when PLAINTIFF worked
3 off-the-clock in order to complete sales and/or assist customers/clients and/or complete other work
4 tasks, yet DEFENDANTS failed to pay PLAINTIFF for all hours worked.

5 28. Based on information and belief, DEFENDANTS engaged in systemic time record
6 manipulation to shave time worked off PLAINTIFF's and other Aggrieved Employees' workdays,
7 by, for example, editing electronic time records to delete portions of total hours worked or otherwise
8 understate actual hours worked by PLAINTIFF and other Aggrieved Employees. For example, as
9 explained above, PLAINTIFF and other Aggrieved Employees working as salespersons, sales
10 consultants, customer service representatives and/or other similar title(s) and/or position(s) were
11 consistently suffered, permitted and/or required to communicate with customers/clients outside of
12 their scheduled work hours as well as deliver vehicles to customers/clients' residences and/or
13 perform other off-the-clock work tasks outside of their scheduled shift times. For example, based
14 on information and belief, from including but not limited to, from in or around at least May 2022
15 through in or around mid-July 2022, DEFENDANTS engaged in systemic time record manipulation,
16 whereby DEFENDANTS deducted, shaved and/or otherwise deleted portions of PLAINTIFF's total
17 hours worked and/or otherwise understated actual hours worked by PLAINTIFF on most if not all
18 shifts PLAINTIFF worked resulting in DEFENDANTS' failure to pay PLAINTIFF for all time
19 worked, including but not limited to, at least approximately ninety percent of PLAINTIFF's time
20 worked beyond eight (8) hours in a day and/or beyond forty hours in a week. As such,
21 DEFENDANTS failed to pay PLAINTIFF all owed minimum wages and overtime wages.

22 29. Based on information and belief, at times, Aggrieved Employees were required to
23 complete other work tasks outside of their reported work time, before clocking in for the start of
24 their shift and/or after clocking out for the end of their shift and/or otherwise outside of their
25 scheduled shift times resulting in DEFENDANTS' failure to compensate Aggrieved Employees for
26 all hours worked and the underpayment of minimum wages and overtime wages. For example, based
27 on information and belief, Aggrieved Employees were required to complete off-the-clock work
28 outside of scheduled shifts due to, including but not limited to, work-related phone calls and/or

1 messages they received to their personal phones and were required to respond to, including but not
2 limited to, communications from supervisors and/or other Aggrieved Employees regarding
3 scheduling and/or other work tasks as well as work-related communications from customers/clients,
4 resulting in the underpayment of minimum and overtime wages owed to Aggrieved Employees.

5 30. Moreover, based on information and belief, at times, DEFENDANTS'
6 electronic/computer time-keeping system/app malfunctioned such that Aggrieved Employees were
7 required to either reinitiate and/or otherwise troubleshoot the system and/or wait for the system to
8 boot prior to being able to clock in and/or were unable to clock in at all for the start of their shifts
9 and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of
10 wages owed to Aggrieved Employees. Based on information and belief, Aggrieved Employees
11 experienced the same issues when clocking out for shifts and/or back in for meal periods. This time
12 spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid
13 minimum wages owed to Aggrieved Employees.

14 31. Moreover, based on information and belief, DEFENDANTS failed to pay
15 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split
16 shifts during the relevant period. For example, based on information and belief, at times,
17 DEFENDANTS required PLAINTIFF and/or other Aggrieved Employees to work two separate
18 shifts in the same day. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF
19 and/or other Aggrieved Employees split shift compensation whenever PLAINTIFF's and/or other
20 Aggrieved Employees' work schedules were interrupted by non-paid non-working periods
21 established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See
22 section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay
23 at the minimum wage shall be paid in addition to the minimum wage for that workday...). See, also,
24 Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the
25 minimum wage shall be paid in addition to the minimum wage for that workday, except when the
26 employee resides at the place of employment). DEFENDANTS also failed to separately itemize
27 these split shift premium wages on PLAINTIFF's and/or other Aggrieved Employees' wage
28 statements, in violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders.

1 See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment
2 on the pay stub provided to the employee, and it should be shown as a separate category such as
3 “Split Shift Premium” and should not be lumped into another category such as wages, bonus, etc.
4 DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF
5 and/or other Aggrieved Employees on their wage statements.

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

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

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

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

26 36. Based on information and belief, DEFENDANTS failed and continue to fail to pay
27 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours
28 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in

1 a work week, in violation of California's overtime laws.

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

7 38. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
8 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
9 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
10 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
11 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
12 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
13 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
14 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
15 completely. For example, during most of PLAINTIFF's shifts, PLAINTIFF was unable to take a full
16 thirty-minute, uninterrupted off-duty meal period due to lack of coverage, lack of relief workers, the
17 need to assist customers/clients and/or complete other work tasks. Typically, PLAINTIFF was
18 forced to eat his lunch while working and/or to take a shortened meal break/quickly eat his lunch
19 when time permitted. Based on information and belief, DEFENDANTS performed an automatic
20 meal period deduction of at least thirty minutes per shift for most if not all shifts PLAINTIFF worked
21 even though DEFENDANTS had actual and/or constructive knowledge that PLAINTIFF was more
22 often than not required to work through part or all of his purported meal period and/or was not
23 relieved of all duties and DEFENDANTS' control during purported meal periods. Based on
24 information and belief, DEFENDANTS engaged in similar systemic time record manipulation as to
25 other Aggrieved Employees by automatically deducting at least thirty minutes per shift for meal
26 periods that were missed, interrupted and/or during which Aggrieved Employees were not relieved
27 of all duties and DEFENDANTS' control, resulting in meal period law violations as well as
28 DEFENDANTS' failure to compensate Aggrieved Employees for all hours worked and the

1 underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

2 39. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
3 also suffered, permitted and/or required to take their single meal periods after working more than
4 five (5) hours but were not paid any and/or all owed meal period premiums for these late meal
5 periods.

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

11 41. Based on information and belief, DEFENDANTS implemented policies and/or
12 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
13 during unpaid meal periods.

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

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

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

28 45. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and

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

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

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

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

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

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

1 51. Based on information and belief, DEFENDANTS did not have a have a compliant
2 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
3 practice. For example, per DEFENDANTS' unlawful rest period policy and practice, PLAINTIFF
4 and other Aggrieved Employees were only authorized to take rest periods if at all once assigned
5 work tasks were completed and/or as time permitted. As such, PLAINTIFF rarely if ever received
6 a full ten-minute, off-duty rest period during PLAINTIFF's employment. Based on information and
7 belief, other Aggrieved Employees similarly were required to work through most or all of their owed
8 rest periods due to lack of coverage, lack of relief workers, the need to assist customers/clients,
9 respond to work-related communications and/or complete other work tasks.

10 52. Moreover, based on information and belief, DEFENDANTS failed to authorize and
11 permit rest periods that were a “net” ten minutes in a suitable rest area and instead, to the extent rest
12 periods were provided at all, limited Aggrieved Employees to only ten-minute rest periods, requiring
13 them to be back at their workstations within ten minutes of leaving, in violation of California rest
14 period law. DEFENDANTS' failure to communicate that the rest period is a net ten minutes
15 deprived Aggrieved Employees of their rights to a full rest period, as such as policy only relieves
16 Aggrieved Employees from their workstation for ten minutes to travel to and from a rest area and
17 be back at the workstation by the end of that ten minutes. Moreover, based on information and
18 belief, Aggrieved Employees were required to remain tethered to work to their workstations and/or
19 were required to monitor and be responsive to work communication devices during purportedly off-
20 duty rest periods, resulting in DEFENDANTS failure to relieve Aggrieve Employees of all duties
21 and DEFENDANTS' control during rest periods, in violation of California rest period law. See
22 *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 269 (Cal. 2016) (“Nonetheless, one cannot square
23 the practice of compelling employees to remain at the ready, tethered by time and policy to particular
24 locations or communications devices, with the requirement to relieve employees of all work duties
25 and employer control during 10-minute rest periods.”)

26 53. Based on information and belief, any purported rest periods were interrupted, cut
27 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of
28 their job duties, and/or commentary from supervisors pressuring them to skip rest periods

1 completely and/or take non-compliant rest periods.

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

4 55. Based on information and belief, DEFENDANTS implemented policies and/or
5 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
6 DEFENDANTS' control during rest periods.

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

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

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

25 59. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
26 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
27 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
28 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal

1 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
2 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
3 other off-the-clock work policies and practices described above) which results in a violation of
4 Labor Code section 226(a).

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

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

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

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

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

21 65. 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 66. Based on information and belief, DEFENDANTS issued wage statements that failed
25 to list the number of non-discretionary bonuses and/or commissions earned and/or failed to list the
26 applicable rate for each non-discretionary bonus and/or commission earned. Instead, based on
27 information and belief, wage statements issued by DEFENDANTS either fail to list and/or identify
28 all earned bonuses/commissions and/or list the total amount of non-discretionary bonuses and/or

1 commissions earned without listing the number of bonuses/commissions and/or the rate for each
2 bonus and/or commission, thereby making it impossible for Aggrieved Employees to know whether
3 they received all owed non-discretionary compensation.

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

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

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

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

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

8 71. Based on further information and belief, DEFENDANTS further failed and continues
9 to fail to accurately record all split shift intervals worked by Aggrieved Employees.

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

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

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

24 75. **Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an
25 employer to pay employees compensated on a piece-rate basis separately for rest and recovery
26 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an
27 employer to include on the wage statements for these employees the total hours of compensable rest
28 and recovery period, the total hours for other non-productive time, the rates of compensation for

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

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

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

20 78. Based on information and belief, DEFENDANTS shifted the costs of doing business
21 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
22 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
23 including but not limited to including but not limited to, uniforms, work clothing/shoes, protective
24 equipment/safety gear and/or the use of Aggrieved Employees' personal mobile phone, personal
25 computers and data usage for work-related purposes, including but not limited to, receiving and
26 responding to work related messages and/or phone calls. For example, based on information and
27 belief, PLAINTIFF and other Aggrieved Employees received work-related calls/messages to their
28 personal phones from managers and/or supervisors and/or customers/clients and/or prospective

1 customers/clients and/or other employees regarding scheduling and other work tasks without being
2 provided any and/or full reimbursement from DEFENDANTS for these business expenses. For
3 example, DEFENDANTS required PLAINTIFF and other Aggrieved Employees working as
4 salespersons, sales consultants, customer service representatives and/or other similar title(s) and/or
5 position(s) to use their personal cell phones to communicate with customers/clients and prospective
6 customers/clients without providing any and/or full reimbursement for these business expenses.

7 79. Furthermore, based on information and belief, Aggrieved Employees also were
8 required to use and did use personal devices, including but not limited to, to perform work duties at
9 home/remotely, such as, but not limited to, reviewing and/or completing work-related paperwork
10 and/or other documents as mandated by DEFENDANTS, however DEFENDANTS failed to
11 provide reimbursement / full reimbursement for expenses Aggrieved Employees' incurred as a result
12 of working for DEFENDANTS remotely and/or from their homes, including but not limited to, cost
13 of internet service, home electricity, cost of additional memory and/or virus software for home
14 computer /personal computer use, among other business expenses associated with remote work
15 required by DEFENDANTS. For example, DEFENDANTS required PLAINTIFF to use his
16 personal laptop for work without providing any and/or full reimbursement to PLAINTIFF for the
17 business expenses incurred in connection therewith, including but not limited to, cost of internet
18 service, data usage, home electricity, cost of additional memory and/or virus software for home
19 computer / personal computer use and/or other related business expenses.

20 80. Additionally, based on information and belief, at times, Aggrieved Employees were
21 not reimbursed for the business use of their personal vehicles, including but not limited to, mileage,
22 vehicle wear and tear, and/or cost of fuel when they were required to drive between DEFENDANTS'
23 locations, offices, dealerships and/or facilities and/or otherwise use their personal vehicles to
24 perform their job duties. As such, DEFENDANTS failed to compensate Aggrieved Employees at
25 the Internal Revenue Service (IRS) mandated per mile compensation rate for the relevant period.

26 81. Based on information and belief, DEFENDANTS regularly failed to reimburse and
27 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
28 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable

1 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
2 assigned by DEFENDANTS.

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

7 83. **Violation of California Day of Rest Law.** Under California law, every employee in
8 California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" its
9 employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor
10 Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

11
12 84. Based on information and belief, DEFENDANTS have and continue to have a
13 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
14 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
15 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
16 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
17 violation of California law, including but not limited to Labor Code Section 551.

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

28 86. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF

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

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

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

18 89. As such, DEFENDANTS have violated California’s paid sick leave laws and
19 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
20 a result of DEFENDANTS’ failure to properly institute a lawful paid sick leave program. These
21 unlawful practices and policies violate Labor Code sections 245-248.5.

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

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

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

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

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

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

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

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

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

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

6 98. Upon separation of employment, Aggrieved Employees' final paychecks were not
7 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
8 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
9 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
10 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
11 accrued rates. For example, DEFENDANTS did not furnish PLAINTIFF with his final paycheck
12 until at least approximately six (6) days following PLAINTIFF's date of termination, and
13 PLAINTIFF's late final paycheck once provided, was devoid of all wages owed, including but not
14 limited to, all owed minimum wages, overtime wages, commissions, premium wages, vacation pay,
15 all owed sick leave and/or paid time off wages at the properly accrued rates.

16 99. Based on further information and belief, DEFENDANTS failed to timely provide all
17 owed wages immediately upon discharge of employment. Based in information and belief, at times,
18 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
19 Aggrieved Employees would not be called in for work for longer than a single pay period due to
20 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
21 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
22 the end of such periods of employment, in violation of including but not limited to Labor Code
23 section 201-202.

24 100. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

25 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

1 violation of Labor Code section 432.5.

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

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

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

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

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

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

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

Unlawful Inquires into Criminal History

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

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

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

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

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

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

1 **Failure to Keep Accurate Records**

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

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

11 115. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
12 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
13 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
14 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
15 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
16 period during which the referenced statutes and Wage Order provisions were violated.¹

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

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

24 117. Section (b) of Labor Code section 226 further requires employers to “afford current

25

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

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

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

22 **Meal Period Violations**

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

28 121. Employers must also provide employees with a second duty-free, uninterrupted thirty

1 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
2 be provided before the end of the 10th hour of work. *Ibid.*

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

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

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

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

28 126. Moreover, based on information and belief, Aggrieved Employees did not receive a

1 timely, uninterrupted second meal period when working shifts over ten (10) hours in a workday.

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

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

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

16 **Rest Period Violations**

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

1 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
2 applicable IWC Wage Order, §12(B).

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

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

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

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

26 135. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
27 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
28 was a missed or otherwise unlawful rest period. Based on further information and belief, when a

1 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
2 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
3 the regular rate of compensation for purposes of determining the owed rest period premium.

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

7 **Minimum and Overtime Wage Violations**

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

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

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

28 140. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and

1 Aggrieved Employees for all hours worked.

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

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

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

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

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

28 146. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,

1 Aggrieved Employees who were compensated on a commission basis with proper written
2 commission agreements, in violation of Labor Code section 2751.

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

15 148. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
16 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
17 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
18 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
19 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
20 226.2.

21 **Statutory Wage Violations**

22 149. California Labor Code section 223 makes it unlawful for an employer to secretly pay
23 wages lower than required by statute while purporting to pay legal wages. As described above,
24 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
25 earned minimum and overtime compensation for all hours worked which resulted in the payment of
26 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
27 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
28 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved

1 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
2 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
3 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
4 Labor Code § 2699(f)-(g).

5 **Refusal to Make Payment**

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

14 **Standard Conditions of Labor Violations**

15 151. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
16 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
17 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
18 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
19 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
20 minimum/overtime wages and other violations described herein result in separate violations of
21 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
22 1197.1 and 2699.

23 **Business Expense Violations**

24 152. California law requires employers to indemnify their employees for all necessary
25 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
26

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

1 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
2 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
3 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
4 incurred by the employee enforcing the rights granted by this section.”

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

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

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

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

23 157. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
24 Employees have suffered injury in that they were not completely reimbursed as mandated by
25 California law.

26 158. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
27 full reimbursement for all reasonable expenses associated with carrying out their duties required
28 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business

1 expenses in violation of Labor Code section 2802.

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

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

9 **Wage Statement Violations**

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

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

27 163. Moreover, due to violations detailed above, including but not limited to,
28 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide

1 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
2 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
3 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
4 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
5 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
6 compensation earned during the pay period into the regular rate of pay for purposes of calculating
7 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
8 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

23 167. Based on information and belief, DEFENDANTS issued wage statements that failed
24 to list the number of non-discretionary bonuses and/or commissions earned and/or failed to list the
25 applicable rate for each non-discretionary bonus and/or commission earned. Instead, based on
26 information and belief, wage statements issued by DEFENDANTS either fail to list and/or identify
27 all earned bonuses/commissions and/or list the total amount of non-discretionary bonuses and/or
28 commissions earned without listing the number of bonuses/commissions and/or the rate for each

1 bonus and/or commission, thereby making it impossible for Aggrieved Employees to know whether
2 they received all owed non-discretionary compensation.

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

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

9 170. DEFENDANTS' failure to accurately list all hours worked on all wage statements
10 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
11 Employees over whether they received all wages owed to them.

12 171. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
13 they could not easily determine whether they received all wages owed to them and whether they
14 were paid for all hours worked.

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

18 173. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
19 Aggrieved Employees with accurate, itemized wage statements.

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

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

4 176. **Unlawful Deductions:** Labor Code section 221 prohibits an employer from
5 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
6 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
7 from Aggrieved Employees paychecks during the relevant period. Such a practice is in violation of
8 including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil
9 penalties under Labor Code Section 2699.

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

16 178. **Violation of California Day of Rest Law.** Under California law, every employee in
17 California is “entitled” to “one day’s rest [from labor] in seven”; and, no employer may “cause” its
18 employees “to work more than six days in seven.” See Labor Code Sections 551 and 552. Labor
19 Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

20 179. Based on information and belief, DEFENDANTS have and continue to have a
21 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
22 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
23 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
24 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
25 violation of California law, including but not limited to Labor Code Section 551.

26 **Seating Violations**

27 180. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be

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

1 provided with suitable seats when the nature of the work reasonably permits the use of seats and
2 when they are not actively engaged in the work duties that would not permit them to be seated.

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

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

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

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

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

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

23 185. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
24 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
25 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
26 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
27 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
28 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each

1 Aggrieved Employee, results in a separate civil penalty.

2 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **Untimely Payment of Final Wages**

27 197. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
28 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and

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

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

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

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

21 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

28 202. The California Labor Code places certain procedural and substantive limits on an

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

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

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

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

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

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

1 Unlawful Inquires into Criminal History

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

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

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

16 211. Under the provisions of PAGA and the above mentioned Labor Code sections,
17 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
18 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
19 1198.5, 1199, 2751, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
20 interpretations of these laws by California Courts and administrative bodies, as well as any other
21 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

1 whether those violations were committed as against PLAINTIFF or any
2 Aggrieved Employee, whether a party to this action or not.

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

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PRAYER FOR RELIEF

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

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

Dated: July 3, 2023

CROSNER LEGAL, PC

By: 
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