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9 Attorneys for Plaintiff CHARMAINE TATE
10 As an individual and on behalf of all others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF EL DORADO**

13 CHARMAINE TATE, as an individual and
14 on behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 PRO ENERGY SERVICES GROUP, LLC,
a Delaware Limited Liability Company;
18 and DOES 1-100, inclusive,

19 Defendants.

Case No.: 23CV0586

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

1 Plaintiff, CHARMAINE TATE (“PLAINTIFF”), as an individual and on behalf of all other
2 similarly situated Class Members (as defined below), and Aggrieved Employees (defined below)
3 hereby files this First Amended Complaint against Defendants PRO ENERGY SERVICES
4 GROUP, LLC, a Delaware Limited Liability Company; and DOES 1-100, inclusive, (collectively
5 referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges
6 as follows:

7 **JURISDICTION AND VENUE**

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

15 **THE PARTIES**

16 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
17 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
18 in the State of California as a non-exempt employee during the Class Period (defined below).

19 3. PLAINTIFF worked for DEFENDANTS as a flagger, traffic controller and/or
20 similar title(s) and/or position(s) from in or around late July 2022, through on or around September
21 1, 2022. DEFENDANTS regularly assigned PLAINTIFF to work at various locations, offices,
22 yards, sites and/or facilities owned, operated and/or otherwise managed by DEFENDANTS,
23 including but not limited to, locations, offices, yards, sites and/or facilities located in Placerville,
24 California, and El Dorado, California.

25 4. DEFENDANTS are a Delaware limited liability company that, at all relevant times,
26 were authorized to do business within the State of California and are doing business in the State of
27 California.

28 5. DEFENDANTS own, operate, or₂ otherwise manage a construction and/or utilities
PLAINTIFF’S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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business, providing services to businesses in the electrical distribution and transmission industry, including but not limited to construction, maintenance, repair, testing and/or inspection of electrical infrastructure and facilities, construction management and coordination, traffic control, facilities and materials management, among other related services. DEFENDANTS own, operate and/or otherwise manage, locations, offices, yards, sites and/or facilities in California, including but not limited to, locations, offices, yards, sites and/or facilities located in Placerville, El Dorado, Riverside, San Diego, and Sacramento.

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

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

JOINT LIABILITY

8. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49

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

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

21 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
22 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
23 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
24 across all of their locations/facilities and subjected all of the Class Members and Aggrieved
25 Employees to these same policies and practices regardless of the location(s) where they worked.
26 Among other things, PLAINTIFF is informed and believes that: (1) there is common ownership in,
27 and financial control, in DEFENDANTS’ companies, (2) DEFENDANTS utilize common
28 management, who have control over the day-to-day operations and employment matters, including

1 the power to hire and fire, set schedules, issue employee policies, and determine rates of
2 compensation across its locations in California; (3) DEFENDANTS utilize the same policies and
3 procedures for all California employees, including issuing the same employee handbooks and other
4 form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel
5 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

6 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
7 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
8 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of
9 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
10 Members and Aggrieved Employees' wages, hours and working conditions, and/or suffered or
11 permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be
12 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.
13 Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a uniform set of
14 policies, practices and/or procedures concerning, inter alia, hourly and overtime pay, time-keeping
15 practices, meal and rest periods, reimbursement of business expenses and other working conditions
16 that were distributed to, and/or applied to PLAINTIFF and the Class Members and Aggrieved
17 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
18 PLAINTIFF and the Class Members and Aggrieved Employees in a uniform manner.
19 DEFENDANTS collectively represented to PLAINTIFF and the Class Members and Aggrieved
20 Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS
21 collectively retained the right to terminate PLAINTIFF's and Class Members and Aggrieved
22 Employees' employment with or without cause. Upon information and belief, DEFENDANTS
23 further collectively represented to PLAINTIFF and Class Members and Aggrieved Employees in
24 writing the details of their compensation, and the manner in which they were to take meal and rest
25 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
26 and the policies applicable to PLAINTIFF and Class Members and Aggrieved Employees by which
27 DEFENDANTS collectively would evaluate the wage rates of PLAINTIFF and Class Members and
28 Aggrieved Employees.

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

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

CLASS ALLEGATIONS

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

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

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

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

1 provided PLAINTIFF and the Class Members with all rest periods or premium
2 payments in lieu thereof, in compliance with California law; (4) whether
3 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
4 itemized wage statements in compliance with California law, displaying,
5 including but not limited to, the total hours worked during the pay period; (5)
6 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
7 wages due upon separation of employment; (6) whether DEFENDANTS failed
8 to reimburse PLAINTIFF and the Class Members for all business expenses; and
9 (7) whether DEFENDANTS violated California Business and Professions Code
10 sections 17200, *et seq.*

- 11 c. Ascertainable Class. The proposed Class is ascertainable as members can be
12 identified and located using information in DEFENDANTS' business, payroll
13 and personnel records.
- 14 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
15 PLAINTIFF suffered a similar injury as members of the Class as a result of
16 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
17 and pay all owed minimum and overtime wages, failure to provide proper meal
18 periods and rest periods or premium compensation in lieu thereof, failure to
19 provide accurate wage statements, failure to reimburse business expenses, and
20 failure to timely pay all wages due upon separation of employment.
- 21 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
22 Class Members. PLAINTIFF has no interests adverse to the interests of the other
23 Class Members. Counsel who represent PLAINTIFF are competent and
24 experienced in litigating similar class action cases and are California lawyers in
25 good standing. Counsel for PLAINTIFF have the experience and resources to
26 vigorously prosecute this case.
- 27 f. Superiority. A class action is superior to other available means for the fair and
28 efficient adjudication of this controversy since individual joinder of all members

1 of the class is impractical. Class action treatment will permit a large number of
2 similarly situated persons to prosecute their common claims in a single forum
3 simultaneously, efficiently, and without the unnecessary duplication of effort
4 and expense that numerous individual actions would engender. Furthermore, as
5 the damages suffered by each individual member of the Class may be relatively
6 small, the expenses and burden of individual litigation would make it difficult
7 or impossible for individual members of the Class to redress the wrongs done to
8 them, while an important public interest will be served by addressing the matter
9 as a class action. The cost to the court system of adjudication of such
10 individualized litigation would be substantial. Individualized litigation would
11 also present the potential for inconsistent or contradictory judgments. Finally,
12 the alternative of filing a claim with the California Labor Commissioner is not
13 superior, given the lack of discovery in such proceedings, the fact that there are
14 fewer available remedies, and the losing party has the right to a trial de novo in
15 the Superior Court.

16 **FACTUAL AND LEGAL ALLEGATIONS**

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

21 16. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
22 PLAINTIFF worked for DEFENDANTS as a flagger, traffic controller and/or similar title(s) and/or
23 position(s) from in or around late July 2022, through on or around September 1, 2022.
24 DEFENDANTS regularly assigned PLAINTIFF to work at various locations, offices, yards, sites
25 and/or facilities owned, operated and/or otherwise managed by DEFENDANTS, including but not
26 limited to, locations, offices, yards, sites and/or facilities located in Placerville, California, and El
27 Dorado, California.

28 17. PLAINTIFF regularly worked at least six (6) to twelve (12) hours per day, at least
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1 five (5) days per week.

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

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

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

17 21. Based on information and belief, Class Members and Aggrieved Employees were
18 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time entries
19 or paying according to scheduled hours worked instead of actual time worked, and/or mandated off-
20 the clock work policies and/or practices. For example, based on information and belief,
21 DEFENDANTS did not provide PLAINTIFF and other Class Members and Aggrieved Employees
22 with any mechanism with which to record their actual shift start and end times; rather,
23 DEFENDANTS recorded for payroll purposes PLAINTIFF's and other Class Members and
24 Aggrieved Employees' total scheduled hours worked and/or scheduled shift start and end times
25 rather than actual hours worked and/or otherwise would forego recording and reporting to payroll
26 all actual time worked by PLAINTIFF and other Class Members and Aggrieved Employees,
27 resulting in the underpayment of minimum wages and overtime wages owed to PLAINTIFF and
28 other Class Members and Aggrieved Employees.⁹

1 22. For example, DEFENDANTS' time records and/or wage statements for PLAINTIFF
2 evidence the rounding of PLAINTIFF's total hours worked to at least the nearest half and/or whole
3 hour. For example, DEFENDANTS' wage statement for PLAINTIFF for pay period beginning on
4 July 25, 2022, and ending on July 31, 2022, shows precisely 7.50 regular hours worked.
5 DEFENDANTS' wage statement for PLAINTIFF for pay period beginning on August 1, 2022, and
6 ending on August 7, 2022, shows precisely 30.00 regular hours worked and precisely 7.50 overtime
7 hours worked. Likewise, DEFENDANTS' wage statement for PLAINTIFF for pay period
8 beginning on August 8, 2022, and ending on August 14, 2022, shows exactly 24.00 regular hours
9 worked, precisely 8.00 overtime hours worked and precisely 2.00 "double time" hours worked.
10 Similarly, DEFENDANTS' wage statement for PLAINTIFF for pay period beginning on August
11 15, 2022, and ending on August 21, 2022, shows exactly 30.00 regular hours worked and exactly
12 4.00 overtime hours worked. Likewise, DEFENDANTS' wage statement for PLAINTIFF for pay
13 period beginning on August 22, 2022, and ending on August 28, 2022, shows precisely 22.50 regular
14 hours worked and precisely 6.00 overtime hours worked. Based on information and belief,
15 DEFENDANTS rounded PLAINTIFF's and other Class Members and Aggrieved Employees' total
16 hours worked to at least the nearest half and/or whole hour during most if not all pay periods during
17 the Class Period, resulting in the underpayment of minimum wages and overtime wages owed to
18 PLAINTIFF and other Class Members and Aggrieved Employees.

19 23. Based on information and belief, DEFENDANTS required/requires Class Members
20 and Aggrieved Employees to travel between DEFENDANTS' facilities/job sites/locations and/or
21 between/around job sites without compensating Class Members and Aggrieved Employees for the
22 travel time, resulting in off-the-clock work and the underpayment of minimum wages and overtime
23 wages owed to Class Members and Aggrieved Employees. For example, on at least six (6)
24 occasions, DEFENDANTS required PLAINTIFF to drive to various job sites after her shift had
25 ended to pick up other Class Members and Aggrieved Employees, tools and/or equipment and/or
26 complete other work tasks before then driving to DEFENDANTS' facility to retrieve her personal
27 vehicle so she could then leave work. This time spent under DEFENDANTS' control, including
28 but not limited to, time spent traveling between DEFENDANTS' locations, sites, and/or facilities

1 and/or time spent completing work tasks at DEFENDANTS' various locations, sites and/or facilities
2 was not recorded and not compensated and resulted in unpaid minimum wages and overtime wages
3 owed to Class Members and Aggrieved Employees.

4 24. Based on information and belief, PLAINTIFF and other Class Members and
5 Aggrieved Employees were also required to complete off-the-clock work outside of scheduled shifts
6 due to, including but not limited to, work-related phone calls and/or messages they received to their
7 personal phones and were required to respond to, including but not limited to, communications from
8 supervisors and/or other Class Members and Aggrieved Employees regarding scheduling and/or
9 other work tasks, resulting in the underpayment of wages owed to Class Members and Aggrieved
10 Employees.

11 25. Based on information and belief, DEFENDANTS required Class Members and
12 Aggrieved Employees to be at their assigned workstations at the start of a scheduled shift, thereby
13 forcing Class Members and Aggrieved Employees to gather work-related tools and/or equipment
14 and/or safety gear prior to their scheduled shift and/or prior to clocking in/signing in, thereby
15 resulting in pre-shift off-the-clock work. Based on information and belief, DEFENDANTS also
16 failed to compensate Class Members and Aggrieved Employees for post-shift off-the-clock work,
17 such as but not limited to, returning tools and/or equipment to DEFENDANTS'
18 facilities/locations/sites, performing maintenance and/or administrative tasks and/or completing
19 other work tasks.

20 26. Based on information and belief, DEFENDANTS did not compensate Class
21 Members and Aggrieved Employees for all time spent donning and doffing personal protective
22 equipment, safety equipment and/or uniforms/work clothing (e.g., hard hats, goggles/protective
23 eyewear, reflective vests, gloves, and/or face masks) during unpaid meal periods, rest periods,
24 before the start of a scheduled shift, and/or after completing a scheduled shift.

25 27. Based on information and belief, DEFENDANTS failed to pay Class Members and
26 Aggrieved Employees for time they were required to spend completing orientation, policy
27 questionnaires, and/or time spent completing the onboarding process including but not limited to
28 reviewing various documents and policies provided by DEFENDANTS. Based on information and

1 belief, this work time was completed off-the-clock and was not compensated.

2 28. Based on further information and belief, DEFENDANTS implemented a time-
3 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
4 Aggrieved Employees of compensable time because the time-rounding system implemented by
5 DEFENDANTS would almost always, if not always, result in understating actual compensable work
6 time. For example, as explained above, based on information and belief, DEFENDANTS rounded
7 PLAINTIFF's and other Class Members and Aggrieved Employees' total hours worked to at least
8 the nearest half and/or whole hour during most if not all pay periods during the Class Period,
9 resulting in the underpayment of minimum wages and overtime wages owed to PLAINTIFF and
10 other Class Members and Aggrieved Employees.

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

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

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

26 32. Based on information and belief, DEFENDANTS sometimes paid PLAINTIFF and
27 other Class Members and Aggrieved Employees multiple rates of base pay in one workweek but
28 failed to incorporate all multiple rates of base pay into the regular rate of pay for purposes of

1 calculating the owed overtime rate. For example, based on information and belief, at times, Class
2 Members and Aggrieved Employees earned multiple base pay rates during the same workweek, yet,
3 DEFENDANTS failed to incorporate all/both base pay rates into the regular rate of pay for purposes
4 of calculating the owed overtime rate, resulting in the miscalculation and underpayment of overtime
5 wages owed to Class Members and Aggrieved Employees.

6 33. Based on information and belief, DEFENDANTS failed to incorporate all non-
7 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
8 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
9 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
10 Class Members and Aggrieved Employees.

11 34. **Meal Period Violations.** PLAINTIFF and other Class Members and Aggrieved
12 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
13 at least one meal period. However, PLAINTIFF and other Class Members and Aggrieved
14 Employees would not receive legally compliant thirty (30) minute first and second meal periods.
15 Based on information and belief, Class Members and Aggrieved Employees were consistently
16 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
17 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due
18 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
19 pressuring them to take non-compliant meal periods or skip meal periods completely.

20 35. Based on information and belief, other Class Members and Aggrieved Employees
21 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
22 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
23 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
24 duties, and/or the need to meet DEFENDANTS' goals and expectations. For example, PLAINTIFF
25 was consistently forced to take shortened and/or interrupted meal periods and/or work through her
26 meal periods completely due to lack of coverage, the need to make/receive work-related
27 communications and/or complete other work tasks. For example, during most, if not all shifts
28 PLAINTIFF worked, PLAINTIFF was required to eat her meals and/or take any meal periods while

1 working. Based on information and belief, DEFENDANTS did not provide PLAINTIFF nor other
2 Class Members and Aggrieved Employees with any mechanism with which to record their meal
3 periods. Instead, DEFENDANTS performed an automatic deduction of at least thirty minutes per
4 shift per Class Member even though DEFENDANTS had actual and/or constructive knowledge that
5 PLAINTIFF and other Class Members and Aggrieved Employees were consistently forced to cut
6 their meal periods short, take interrupted meal periods and/or work through their meal periods
7 completely.

8 36. Based on information and belief, DEFENDANTS implemented policies and/or
9 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
10 DEFENDANTS' control during unpaid meal periods.

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

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

22 39. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
23 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
24 compliant thirty (30) minute second meal period. For example, when PLAINTIFF worked shifts
25 lasting longer than ten (10) and/or twelve (12) hours, PLAINTIFF was not afforded with any version
26 of a second meal period.

27 40. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
28 other Class Members and Aggrieved Employees as to the timing and duty-free nature of meal

1 periods. Based on further information and belief, DEFENDANTS did not have a compliant written
2 meal period policy, nor did DEFENDANTS have any sort of compliant policy in practice.

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

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

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

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

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

1 46. 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, during most, if not all of her shifts, PLAINTIFF was required to work through
4 part or all of her owed rest periods due to lack of coverage, the need to make/receive work-related
5 communications and/or complete other work tasks.

6 47. DEFENDANTS further failed to authorize and permit rest periods that were a "net"
7 ten minutes in a suitable rest area and instead, to the extent any rest periods were provided at all,
8 limited Class Members and Aggrieved Employees to only ten-minute rest periods, requiring them
9 to be back at their workstations within ten minutes of leaving, in violation of California rest period
10 law.

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

16 49. Furthermore, DEFENDANTS failed to provide any form of a second rest period on
17 shifts lasting longer than six (6) hours. For example, when PLAINTIFF worked shifts lasting longer
18 than six (6) hours, PLAINTIFF was not afforded with any version of a second rest period.

19 50. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
20 lasting longer than ten hours. For example, when PLAINTIFF worked shifts lasting longer than ten
21 (10) hours, PLAINTIFF was not afforded with any version of a third rest period.

22 51. Based on information and belief, DEFENDANTS implemented policies and/or
23 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
24 all duties and DEFENDANTS' control during rest periods.

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

28 53. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 which PLAINTIFF and Class Members and Aggrieved Employees experienced a missed/unlawful
2 rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium
3 at all for each workday a proper rest period was not provided and/or failed to pay the proper rest
4 period premium for failure to incorporate all non-discretionary remuneration, including but not
5 limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
6 regular rate of compensation for purposes of calculating the owed rest period premium.

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

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

24 56. As described herein, based on information and belief, DEFENDANTS also failed to
25 incorporate all forms of non-discretionary compensation earned during the pay period into the
26 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
27 of overtime worked by PLAINTIFF and other Class Members and Aggrieved Employees.

28 57. Moreover, based on information and belief, DEFENDANTS issued wage statements
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 to PLAINTIFF and Class Members and Aggrieved Employees that further violate Labor Code
2 section 226(a), by among other things, failing to list the correct name and/or address of the legal
3 entity that is the employer.

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

7 59. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
8 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
9 Employees all wages that were due and owing upon termination or resignation. Based on
10 information and belief, DEFENDANTS untimely provide final wages to Class Members and
11 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

12 60. Upon separation of employment, Class Members and Aggrieved Employees' final
13 paychecks were not timely provided and/or were not timely provided with all owed vacation pay
14 and/or paid time off. Moreover, PLAINTIFF's and Class Members and Aggrieved Employees' final
15 paychecks, once provided, did not include all wages owed as they were 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 61. Moreover, DEFENDANTS failed to timely provide all owed wages immediately
19 upon discharge of employment. For example, based on information and belief, at times, Class
20 Members and Aggrieved Employees experienced breaks in their employment caused by
21 DEFENDANTS whereby Class Members and Aggrieved Employees would not be called in for work
22 for longer than a single pay period due to including but not limited to DEFENDANTS' lack of work
23 or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS
24 failed to timely pay all owed wages at the end of such periods of employment, in violation of
25 including but not limited to Labor Code section 201-202.

26 62. These violations subject DEFENDANTS to civil penalties under Labor Code section
27 203, 210, and/or 256.

28 63. **Unreimbursed Business Expenses.** Based on information and belief,
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

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

6 64. Based on information and belief, DEFENDANTS shifted the costs of doing business
7 onto Class Members and Aggrieved Employees by requiring them to pay for business expenses,
8 including but not limited to, uniforms/work clothing/shoes/personal protective/safety gear and/or
9 the use of Class Members and Aggrieved Employees' personal mobile phones, cost of internet and/or
10 data usage for work related purposes, including but not limited to, to receive and respond to work
11 related messages and/or phone calls. For example, based on information and belief, PLAINTIFF
12 was required to use her personal cell phone/mobile device to make/receive calls/messages to/from
13 her supervisors and/or other Class Members and Aggrieved Employees during most if not all shifts
14 PLAINTIFF worked during including but not limited to, pay period beginning, on July 25, 2022,
15 and ending on July 31, 2022, pay period beginning on August 1, 2022, and ending on August 7,
16 2022, pay period beginning on August 8, 2022, and ending on August 14, 2022, pay period
17 beginning on August 15, 2022, and ending on August 21, 2022, pay period beginning on August
18 22, 2022, and ending on August 28, 2022, yet DEFENDANTS did not provide PLAINTIFF with
19 any reimbursement for this business use of her personal cell phone/mobile device. For example,
20 DEFENDANTS' wage statements issued to PLAINTIFF for including but not limited to the
21 aforementioned pay periods due not reflect the payment of any cell phone reimbursement.

22 65. Based on information and belief, Class Members and Aggrieved Employees were
23 not reimbursed for the cost of using their personal phone for work related purposes and/or the cost
24 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
25 protective/safety gear (e.g., face masks, gloves and/or ear plugs). For example, DEFENDANTS
26 required PLAINTIFF to purchase steel-toed boots to wear for work without providing any form of
27 reimbursement for these business expenses.

28 66. Additionally, based on information and belief, Class Members and Aggrieved
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 Employees were not reimbursed/not reimbursed in full for the business use of their personal vehicles
2 and/or cost of fuel when driving any company vehicles. For example, based on information and
3 belief, at times, DEFENDANTS required Class Members and Aggrieved Employees to use their
4 personal vehicles to drive between job sites and/or use their personal vehicles for other work
5 purposes including but not limited to transporting tools, equipment and/or other Class Members and
6 Aggrieved Employees between job sites/yards, without providing any and/or full reimbursement for
7 the vehicle-related expenses incurred in connection therewith. For example, on at least four (4)
8 occasions, DEFENDANTS required PLAINTIFF to use her personal vehicle to drive between job
9 sites during her shifts, yet DEFENDANTS did not provide PLAINTIFF with any and/or full
10 reimbursement for mileage, cost of fuel, cost of wear and tear on the vehicle, among other vehicle-
11 related expenses, PLAINTIFF incurred in connection with DEFENDANTS' business use of
12 PLAINTIFF's personal vehicle. As such, DEFENDANTS failed to compensate Class Members and
13 Aggrieved Employees at the legally mandated Internal Revenue Service (IRS) per mile
14 compensation rates in effect during the relevant period.

15 67. Based on information and belief, DEFENDANTS failed to reimburse Class Members
16 and Aggrieved Employees for expenses associated with having to purchase and/or maintain their
17 own hand tools and/or equipment required to perform their assigned job duties.

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

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

27 70. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
28 engaged in these same herein described unlawful practices and that DEFENDANTS applied these

1 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

2 **FIRST CAUSE OF ACTION**

3 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
4 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

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

13 73. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
14 Commission ("IWC") Wage Orders, an employer must pay its employees for all hours worked, up
15 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
16 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
17 period is unlawful.

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

25 75. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
26 Class Members for all hours worked.

27 76. Based on information and belief, DEFENDANTS had actual or constructive
28 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
meal periods, failure to relieve employees of all duties and employer control during unpaid meal

1 periods, policy and practice of payment according to scheduled work time rather than actual work
2 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
3 owed to PLAINTIFF and other Class Members.

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

7 **SECOND CAUSE OF ACTION**
8 **Recovery of Unpaid Overtime Wages**
9 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

11 79. Employees in California must be paid overtime, equal to one and one-half times the
12 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
13 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
14 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
15 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
16 consecutive day of work in a workweek, unless they are exempt.

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

23 81. Based on information and belief, DEFENDANTS failed to pay twice Class
24 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
25 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
26 violation of California's overtime laws.

27 82. Based on information and belief, DEFENDANTS further violated California's
28 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary

1 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
2 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
3 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
4 other Class Members.

5 83. DEFENDANTS' conduct described above is in violation of California Labor Code
6 sections 510 and 1194 and all applicable Wage Orders.

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

9 **THIRD CAUSE OF ACTION**

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

11 85. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

12 86. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
13 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
14 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
15 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
16 waived, but only under the following circumstances: (1) if an employee's total work period in a day
17 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
18 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
19 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
20 waived by mutual consent of the employer and employee, but only if the first meal period was not
21 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
22 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
23 done so.

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

28 88. As explained above, PLAINTIFF and other Class Members were consistently unable

1 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
2 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
3 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
4 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
5 completely.

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

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

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

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

21 93. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
22 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
23 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
24 all in an amount to be proved at trial.

25 **FOURTH CAUSE OF ACTION**

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

27 94. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

28 95. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer

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

10 96. If the employer fails to provide any required rest period, the employer must pay the
11 employee one hour of pay at the employee’s regular rate of compensation for each workday the
12 employer did not provide at least one legally required rest period, pursuant to Labor Code section
13 226.7.

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

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

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

27 100. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
28 period premium to PLAINTIFF and other Class Members for each workday in which there was a

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

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

10 **FIFTH CAUSE OF ACTION**
11 **Failure to Furnish Accurate Itemized Wage Statements**
12 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

13 102. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

14 103. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
15 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
16 wage statement accurately stating the following:

17 (1) gross wages earned, (2) total hours worked by the employee,
18 except for any employee whose compensation is solely based on a
19 salary and who is exempt from payment of overtime under
20 subdivision (a) of Section 515 or any applicable order of the Industrial
21 Welfare Commission, (3) the number of piece-rate units earned and
22 any applicable piece rate if the employee is paid on a piece-rate basis,
23 (4) all deductions, provided that all deductions made on written orders
24 of the employee may be aggregated and shown as one item, (5) net
25 wages earned, (6) the inclusive dates of the period for which the
26 employee is paid, (7) the name of the employee and his or her social
27 security number, except that by January 1, 2008, only the last four
28 digits of his or her social security number or an employee
identification number other than a social security number may be
shown on the itemized statement, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

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

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

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

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

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

1 of overtime worked by Class Members.

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

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

7 110. DEFENDANTS' failure to accurately list all hours worked on all wage statements
8 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
9 Members over whether they received all wages owed to them.

10 111. As a result, PLAINTIFF and other Class Members have suffered injury as they could
11 not easily determine whether they received all wages owed to them and whether they were paid for
12 all hours worked.

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

16 113. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
17 Class Members with accurate, itemized wage statements.

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

27 115. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
28 are entitled to recover fifty dollars per employee²⁸ for the initial pay period in which a Section 226

1 violation occurred and one hundred dollars per employee per violation for each subsequent pay
2 period, not to exceed an aggregate penalty of four thousand dollars per employee.

3 116. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
4 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
5 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
6 provide currently employed Class Members with inaccurate wage statements in violation of
7 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
8 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
9 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
10 with California Labor Code § 226(a).

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

14 **SIXTH CAUSE OF ACTION**

15 **Failure to Timely Pay All Wages Due Upon Separation of Employment (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

16 118. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

17 119. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
18 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
19 payable immediately."

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

25 121. Based in information and belief, DEFENDANTS failed and continue to fail to timely
26 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
27 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
28 Members do not include all wages owed as they are devoid of, including but not limited to, all owed

1 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or
2 paid time off wages at the properly accrued rates.

3 122. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
4 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
5 pay, plus attorney's fees and costs, in an amount to be proved at trial.

6 **SEVENTH CAUSE OF ACTION**
7 **Failure to Reimburse Business Expenses**
8 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

9 123. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

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

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

1 128. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
2 Members have suffered injury in that they were not completely reimbursed as mandated by
3 California law.

4 129. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
5 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
6 attorneys' fees, and costs of suit.

7 **EIGHTH CAUSE OF ACTION**

8 **Unfair Competition**

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

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

11 131. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
12 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
13 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
14 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
15 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
16 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
17 wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure
18 to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to
19 provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to,
20 including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
21 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
22 number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and
23 practices, payment according to scheduled hours worked and/or other off-the-clock work policies
24 and practices).

25 132. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
26 California Labor Code, DEFENDANTS have gained a competitive advantage over other
27 comparable companies doing business in the State of California that comply with their obligations
28 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate

1 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
2 minimum and overtime wages and to pay all wages due upon separation of employment of their
3 employees.

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

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

13 135. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
14 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
15 by law.

16 **NINTH CAUSE OF ACTION**

17 **Violation of the Private Attorneys General Act of 2004**

18 **(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)**

19 136. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

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

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

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

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

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

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

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

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

24 142. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
25 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
26 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510,
27 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
28 applicable Wage Orders.

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

7 144. Additionally, DEFENDANTS have violated the following Labor Code sections and
8 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

9 **Failure to Keep Accurate Records**

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

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

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

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 “in 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 **Cooldown Recovery Period Violations**

2 148. California Code of Regulations, Title 8, section 3395 mandates that all employers
3 with “outdoor places of employment” implement a heat illness prevention program that includes,
4 among other requirements, providing workers “cool-down” periods of at least five minutes in the
5 shade. Specifically, section 3395 provides that “employees shall be allowed and encouraged to take
6 a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the
7 need to do so to protect themselves from overheating” and that “such access to shade shall be
8 permitted at all times.” Under California Labor Code section 226.7, if an employer fails to provide
9 an employee a recovery period, the employer shall pay the employee one additional hour of pay at
10 the employee’s regular rate of compensation for each workday that the meal or rest or recovery
11 period is not provided.

12 149. Based on information and belief, Aggrieved Employees were required to spend
13 multiple hours at a time outdoors in significantly high temperature heat conditions. DEFENDANTS
14 failed to provide proper heat illness prevention training and/or heat illness
15 policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8
16 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
17 California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
18 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
19 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
20 shade for extended periods of time. In addition, DEFENDANTS, failed to pay Aggrieved
21 Employees with an additional hour of pay at the regular rate of pay for each missed cooldown
22 recovery period.

23 **Reporting Time Pay Violations**

24 150. Section 5 of all applicable IWC Wage Orders, provides as follows:

25 151. (A) Each workday an employee is required to report for work and does report, but is
26 not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the
27 employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two
28 (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less

1 than the minimum wage. (B) If an employee is required to report for work a second time in any one
2 workday and is furnished less than two (2) hours of work on the second reporting said employee
3 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
4 minimum wage.

5 152. Aggrieved Employees were not paid reporting time wages in accordance with
6 California law, including but not limited to the applicable IWC Wage Order. For example, based on
7 information and belief, at times, PLAINTIFF and/or other Aggrieved Employees reported to work
8 for a scheduled shift but were sent home and/or were not put to work and were not paid all owed
9 reporting time pay wages in accordance with California law.

10 153. Based on information and belief, DEFENDANTS have a policy and practice of
11 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
12 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
13 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
14 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

15 **Seating Violations**

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

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

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

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

26 156. Suitable seating is one of the worker protections covered by California's Wage
27 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
28 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*

1 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

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

11 159. The Aggrieved Employees worked in various positions. The nature of Aggrieved
12 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
13 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
14 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
15 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
16 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
17 separate civil penalty.

18 **Sick Leave Violations**

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

26 161. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
27 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
28 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used

1 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
2 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

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

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

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

17 166. On information and belief, PLAINTIFF alleges that all of these practices were
18 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

1 Labor Code section 248.6.

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

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

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

14 **Statutory Wage Violations**

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

26 **Refusal to Make Payment**

27 172. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
28 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated

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

7 **Standard Conditions of Labor Violations**

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

16 **Unlawful Deductions**

17 174. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
18 an employee any part of wages theretofore paid by said employer to said employee." Based on
19 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
20 paychecks during the relevant period including but not limited to deducting costs of uniforms and/or
21 other business costs and/or deducting wages for purported overpayments from previous pay periods
22 and/or unlawfully deducting wages for negligently damaged property and/or deducting costs
23 advanced. Such a practice is in violation of including but not limited to, Labor Code Sections 221-
24 222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

6 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

27 178. Based on information and belief, DEFENDANTS ordered unlawful financial credit
28 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to

1 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
2 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

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

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

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

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

16 Unlawful Inquires into Criminal History

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

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

26 185. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
27 Code section 432.7. By asking about convictions at the application phase or prior to extending an
28 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated

1 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
2 disclose arrests and/or convictions as a condition of employment.

3 Unlawful PAGA Waiver

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

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

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

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

24 190. Under the provisions of PAGA and the above mentioned Labor Code sections,
25 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
26 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
27 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
28 interpretations of these laws by California Courts⁴³ and administrative bodies, as well as any other

1 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

13 **PRAYER FOR RELIEF**

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

- 16 1. For an order that the action be certified as a class action;
- 17 2. For an order that PLAINTIFF be appointed as class representative;
- 18 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
- 19 4. For compensatory damages according to proof;
- 20 5. For liquidated damages according to proof;
- 21 6. For penalties according to proof;
- 22 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
- 23 withheld from PLAINTIFF and the Class Members;
- 24 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
- 25 section 17200, *et seq.*, of the California Business and Professions Code;
- 26 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
- 27 10. For pre-judgment interest as permitted by law;
- 28 11. For attorney's fees and costs reasonably incurred;

- 1 12. For civil penalties according to proof, including PAGA penalties (75% payable to
2 the LWDA and 25% payable to Aggrieved Employees); and
3 13. For such other and further relief that the Court deems just and proper.
4

5 Dated: July 27, 2023

CROSNER LEGAL, PC

6
7 By: Samantha Smith

8 Zachary M. Crosner, Esq.
9 Brandon Brouillette, Esq.
10 Samantha Smith, Esq.
11 Attorneys for Plaintiff
12 CHARMAINE TATE

13 **DEMAND FOR JURY TRIAL**

14 PLAINTIFF demands a trial by jury on all claims so triable.
15

16 Dated: July 27, 2023

CROSNER LEGAL, PC

17
18 By: Samantha Smith

19 Zachary M. Crosner, Esq.
20 Brandon Brouillette, Esq.
21 Samantha Smith, Esq.
22 Attorneys for Plaintiff
23 CHARMAINE TATE
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