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County of Ventura

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on behalf of the State of California,

and others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

HECTOR OMAR SANCHEZ, on behalf of
the State of California, and others similarly
situated and aggrieved,

Plaintiff,

v.

RANGAM CONSULTANTS INC., a New
Jersey Corporation; QUEST
DIAGNOSTICS INCORPORATED, a
Delaware Corporation; QUEST
DIAGNOSTICS HEALTH & WELLNESS
LLC, a Delaware Limited Liability
Company; QUEST DIAGNOSTICS TB,
LLC, a Delaware Limited Liability
Company; QUEST DIAGNOSTICS
CLINICAL LABORATORIES, INC. a
Delaware Corporation; and DOES 1-100,
inclusive,

Defendants.

Case No.: 2023CUOE014395

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

1 Plaintiff, HECTOR OMAR SANCHEZ, ("PLAINTIFF"), an individual on behalf of
2 PLAINTIFF, the State of California, and all other Aggrieved Employees (as defined below), hereby
3 files this Complaint against Defendants RANGAM CONSULTANTS INC., a New Jersey
4 Corporation; QUEST DIAGNOSTICS INCORPORATED, a Delaware Corporation; QUEST
5 DIAGNOSTICS HEALTH & WELLNESS LLC, a Delaware Limited Liability Company; QUEST
6 DIAGNOSTICS TB, LLC, a Delaware Limited Liability Company; QUEST DIAGNOSTICS
7 CLINICAL LABORATORIES, INC., a Delaware Corporation; and DOES 1-100, inclusive,
8 (collectively referred to herein as "DEFENDANTS"). PLAINTIFF is informed and believes and
9 thereon alleges as follows:

10 **INTRODUCTION**

11 1. This is a representative action filed by PLAINTIFF on behalf of PLAINTIFF, all
12 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California's
13 Private Attorney General Act, Labor Code section 2698 *et. seq.* ("PAGA"), to recover civil penalties
14 (75% payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
15 Employees) for DEFENDANTS' violations of the California Labor Code as alleged below.

16 **JURISDICTION AND VENUE**

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

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

25 **THE PARTIES**

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

28 5. PLAINTIFF worked for DEFENDANTS as a phlebotomist and/or greeter, and/or

1 similar title(s) and/or position(s) from on or around December 20, 2022 through on or around
2 January 31, 2023. PLAINTIFF was staffed by Defendant RANGAM CONSULTANTS INC. at
3 location(s), clinic(s), office(s) and/or facilities owned, operated and/or managed by, including but
4 not limited to, QUEST DIAGNOSTICS INCORPORATED and/or QUEST DIAGNOSTICS
5 HEALTH & WELLNESS LLC, and/or QUEST DIAGNOSTICS TB, LLC and/or QUEST
6 DIAGNOSTICS CLINICAL LABORATORIES, INC.

7 6. Defendant RANGAM CONSULTANTS INC. is a New Jersey Corporation that, at
8 all relevant times, was authorized to do business within the State of California and is doing business
9 in the State of California.

10 7. Defendant QUEST DIAGNOSTICS INCORPORATED is a Delaware Corporation
11 that, at all relevant times, was authorized to do business within the State of California and is doing
12 business in the State of California.

13 8. Defendant QUEST DIAGNOSTICS HEALTH & WELLNESS LLC is a Delaware
14 Limited Liability Company that, at all relevant times, was authorized to do business within the State
15 of California and is doing business in the State of California.

16 9. Defendant QUEST DIAGNOSTICS TB, LLC is a Delaware Limited Liability
17 Company that, at all relevant times, was authorized to do business within the State of California and
18 is doing business in the State of California.

19 10. Defendant QUEST DIAGNOSTICS CLINICAL LABORATORIES, INC. is a
20 Delaware Corporation that, at all relevant times, was authorized to do business within the State of
21 California and is doing business in the State of California.

22 11. Defendants QUEST DIAGNOSTICS INCORPORATED and/or QUEST
23 DIAGNOSTICS HEALTH & WELLNESS LLC, and/or QUEST DIAGNOSTICS TB, LLC and/or
24 QUEST DIAGNOSTICS CLINICAL LABORATORIES, INC. (collectively referred to herein as
25 “Quest”) own, operate and/or otherwise manage a health care business specializing in including but
26 not limited to, the provision of diagnostic testing services, with at least hundreds of clinics, offices,
27 locations and/or facilities located in cities throughout California, including but not limited to, in
28 Alameda, California, and in Ventura, California, where DEFENDANTS regularly assigned

1 PLAINTIFF to work during PLAINTIFF's employment.

2 12. Defendant RANGAM CONSULTANTS INC. ("Rangam") owns, operates and/or
3 otherwise manages a staffing business that supplies labor to including but not limited to, including
4 but not limited to, health care businesses, such as, but not limited to, Quest.

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

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

21 **JOINT LIABILITY**

22 15. Under California law, the definition of the terms "to employ" are broadly construed
23 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
24 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
25 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
26 Cal.4th 35, 64 (2010). One reason that the IWC defined "employer" in terms of exercising control
27 was to reach situations in which multiple entities control different aspects of the employment
28

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

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

19 17. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
20 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
21 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
22 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
23 policies and practices regardless of the location(s) where they worked. Among other things,
24 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
25 in DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control
26 over the day-to-day operations and employment matters, including the power to hire and fire, set
27 schedules, issue employee policies, and determine rates of compensation across its locations in
28 California; (3) DEFENDANTS utilize the same policies and procedures for all California

1 employees, including issuing the same employee handbooks and other form agreements; (4)
2 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
3 employment matters; and, (6) DEFENDANTS share employees.

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

10 19. For example, each of the entities collectively referred to herein as Quest, share the
11 same principal place of business and/or mailing address and/or Agent for Service of Process as
12 provided to the California Secretary of State, and based on information and belief, share some of
13 the same attorneys and/or human resources personnel to oversee employment-related matters.

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

28 21. Moreover, based on information and belief, Rangam hired PLAINTIFF and entered

1 into a written employment agreement with PLAINTIFF. During PLAINTIFF's employment,
2 Rangam maintained control over many aspects of PLAINTIFF's employment, including, among
3 other things, having the authority to discipline PLAINTIFF, change PLAINTIFF's job assignment,
4 change PLAINTIFF's work hours, change PLAINTIFF's rates of pay, and to terminate PLAINTIFF's
5 employment.

6 22. In addition, when PLAINTIFF was first hired, Rangam provided PLAINTIFF with
7 orientation and training materials. Rangam issued PLAINTIFF written policies concerning meal
8 periods, rest breaks, timekeeping, hours worked, and payment of PLAINTIFF's wages, with which
9 PLAINTIFF was required to comply. Based on information and belief, among other things, these
10 policies provided that PLAINTIFF's weekly time records be submitted to Rangam, and Rangam was
11 supposed to process PLAINTIFF's time records and pay PLAINTIFF for all hours worked. Rangam
12 exercised ultimate control over the payment of PLAINTIFF's wages, as Rangam issued PLAINTIFF
13 her paychecks. Finally, Rangam directed PLAINTIFF to comply with Quest's policies and
14 directions. PLAINTIFF is informed and believes that Rangam exercised the same control over,
15 applied the same policies and practices, and engaged in the same acts and omissions with regard to
16 the other Aggrieved Employees.

17 23. Quest similarly suffered or permitted PLAINTIFF to work for them or engaged
18 PLAINTIFF to work for them. PLAINTIFF is informed and believes that Quest entered into a
19 written agreement with Rangam, pursuant to which Quest paid Rangam to provide it with workers,
20 including PLAINTIFF, to conduct Quest's business operations - namely, to work in Quest's
21 production/processing centers and/or administration offices. Quest suffered or permitted
22 PLAINTIFF to work at Quest and for the entirety of PLAINTIFF's employment.

23 24. Quest further exercised control over PLAINTIFF's wages, hours and working
24 conditions. Quest also: (1) set PLAINTIFF's work hours and provided PLAINTIFF with
25 PLAINTIFF's work schedule; (2) provided PLAINTIFF with policies regarding meal periods and
26 rest breaks, with which PLAINTIFF was required to comply; (3) directly supervised PLAINTIFF's
27 work through its employees; (4) assigned PLAINTIFF job duties and trained PLAINTIFF on said
28 job duties; (5) exercised authority to reprimand and counsel PLAINTIFF regarding any work

1 performance and other issues; (6) exercised authority to end PLAINTIFF's work assignment at any
2 time, which essentially equated to a termination of employment as PLAINTIFF was not guaranteed
3 any other job assignments; (7) required PLAINTIFF to use its timekeeping system for purposes of
4 recording time worked; (8) determined whether and when PLAINTIFF would receive meal periods
5 and rest breaks; (9) subjected PLAINTIFF to unlawful schedules for taking meal periods and rest
6 breaks; and, (10) was responsible for recording when PLAINTIFF began and ended work shifts. On
7 information and belief, Quest issued further written policies and practices and guidelines governing
8 PLAINTIFF's working conditions with which PLAINTIFF was required to comply. PLAINTIFF is
9 informed and believes that Quest exercised the same control over, applied the same policies and
10 practices, and engaged in the same acts and omissions with regard to the other Aggrieved
11 Employees.

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

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

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

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

PAGA ALLEGATIONS

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

- (i) all non-exempt workers who were directly employed by Rangam regardless of where those non-exempt workers were assigned or staffed to work in California from one year plus 65 days from the filing of the initial Complaint through the present (“PAGA Period”).
- (ii) all non-exempt workers who were assigned/staffed to work at QUEST DIAGNOSTICS INCORPORATED and/or QUEST DIAGNOSTICS HEALTH & WELLNESS LLC and/or QUEST DIAGNOSTICS TB, LLC and/or QUEST DIAGNOSTICS CLINICAL LABORATORIES, INC. by Rangam and/or any other staffing/temporary service agencies in California at any time during the PAGA Period; and
- (iii) all non-exempt workers who were directly employed by QUEST DIAGNOSTICS INCORPORATED and/or QUEST DIAGNOSTICS HEALTH & WELLNESS LLC and/or QUEST DIAGNOSTICS TB, LLC and/or QUEST DIAGNOSTICS CLINICAL LABORATORIES, INC. in California at any time during the PAGA Period.

30. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23

1 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
2 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
3 *Id.* at 760-761.

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

5 31. PLAINTIFF, on April 19, 2023, through counsel, gave written notice by online filing
6 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
7 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
8 in this Complaint (“PAGA Notice”).

9 32. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
10 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
11 Employees.

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

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

20 **FACTUAL ALLEGATIONS**

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

25 36. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFFS worked for
26 DEFENDANTS as a non-exempt employee with a job title(s) of phlebotomist and/or greeter and/or
27 similar title(s) and/or position(s) from in or around December 20, 2022 through in or around January
28 31, 2023. PLAINTIFF worked for DEFENDANTS at including, but not limited to, DEFENDANTS’

Ventura County, California location(s). PLAINTIFF regularly worked at least eight (8) hours per day, at least four (4) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked.

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

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

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

40. Based on information and belief, Aggrieved Employees were not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours worked instead of actual time worked, time rounding policies and practices, and/or mandated off-the clock work policies and/or practices.

41. For example, based on information and belief, DEFENDANTS required PLAINTIFF and other Aggrieved Employees to record only scheduled hours worked rather than actual time worked and/or to otherwise forego recording all actual time worked, resulting in the failure to pay PLAINTIFF and other Aggrieved Employees for all time worked, including but not limited to, pre-shift and/or post-shift off the clock work and/or other off-the-clock work outside of scheduled shift times as explained below.

1 42. 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' time records and/or wage statements for pay period beginning
4 on January 9, 2023, and ending on January 22, 2023, shows precisely 32.00 regular hours worked.
5 Likewise, DEFENDANTS' time records and/or wage statements for pay period beginning on
6 January 23, 2023, and ending on February 5, 2023, shows exactly 16.50 regular hours worked.

7 43. Based on information and belief, DEFENDANTS have a policy and practice of
8 engaging in systemic time record manipulation to shave time off PLAINTIFF and other Aggrieved
9 Employees' work by among other things, permitting and/or requiring Aggrieved Employees to
10 record scheduled hours worked rather than actual time worked and/or to otherwise forego recording
11 all hours worked, resulting in the underpayment of minimum wages and overtime wages owed to
12 Aggrieved Employees.

13 44. Based on information and belief, DEFENDANTS had actual and/or constructive
14 knowledge that PLAINTIFF and other Aggrieved Employees were suffered, permitted and/or
15 required to perform pre-shift and/or post shift off-the-clock work and/or other off-the-clock work
16 outside of their scheduled shift times, which said work time was neither recorded nor compensated,
17 resulting in violations of California's minimum wage laws and overtime wage laws, the
18 underpayment of wages owed to PLAINTIFF and other Aggrieved Employees, record-keeping and
19 wage statement violations, among other violations of the California Labor Code described herein.

20 45. For example, based on information and belief, DEFENDANTS did not compensate
21 Aggrieved Employees for all time spent donning and doffing personal protective equipment, safety
22 equipment and/or uniforms/work clothing (e.g., scrubs, hairnets, gloves, and/or face masks) during
23 meal periods, rest periods, before the start of a scheduled shift, and/or after completing a scheduled
24 shift.

25 46. Also, based on information and belief, DEFENDANTS required Aggrieved
26 Employees to be at their assigned workstations at the start of a scheduled shift, thereby forcing
27 Aggrieved Employees to gather and/or clean and/or sterilize work related equipment, complete
28 paperwork, data entry and/or other related administrative work and/or cleaning and/or sterilization

1 and/or complete other work tasks prior to their scheduled shift and/or prior to clocking in/signing
2 in, thereby resulting in pre-shift off-the-clock work.

3 47. Based on information and belief, DEFENDANTS also failed to compensate
4 Aggrieved Employees for post-shift off-the-clock work, such as but not limited to, returning and/or
5 cleaning and/or sterilizing tools and/or equipment, completing paperwork/performing data entry
6 and/or other administrative tasks and/or completing other work tasks.

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

13 49. Additionally, PLAINTIFF and other Aggrieved Employees were required to perform
14 other off-the-clock work for which they were not compensated. For example, based on information
15 and belief, at times, DEFENDANTS' electronic employee time-keeping system/app at times
16 malfunctioned such that Aggrieved Employees were required to either reinitiate and/or otherwise
17 troubleshoot the system prior to being able to clock in and/or were unable to clock in at all for the
18 start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the
19 underpayment of wages owed to Aggrieved Employees. Based on information and belief,
20 Aggrieved Employees experienced the same issues when clocking out for shifts and/or back in for
21 meal periods. This time spent under DEFENDANTS' control was not recorded and not
22 compensated and resulted in unpaid minimum wages owed to Aggrieved Employees.

23 50. Based on information and belief, at times, Aggrieved Employees were required to
24 assist patients and/or complete other work tasks outside of their reported work time, before clocking
25 in for the start of their shift and/or after clocking out for the end of their shift and/or otherwise
26 outside of their scheduled shift times resulting in DEFENDANTS' failure to compensate Aggrieved
27 Employees for all hours worked and the underpayment of minimum wages and overtime wages to
28 Aggrieved Employees.

1 51. Based on information and belief, DEFENDANTS have a policy and practice of
2 requiring Aggrieved Employees to travel between DEFENDANTS' facility locations without
3 compensating Aggrieved Employees for the travel time. For example, based on information and
4 belief, due to scheduling issues and/or understaffing, Aggrieved Employees were at times required
5 after working at their scheduled facility location to cover a shift at another of DEFENDANTS'
6 clinics/offices/facilities but were not compensated for the time spent driving to the second
7 clinic/office/facility, resulting in the underpayment of wages owed to Aggrieved Employees.

8 52. Based on information and belief, DEFENDANTS failed to pay Aggrieved
9 Employees for time they were required to spend completing orientation, training, certifications,
10 temperature screenings and/or other employer-mandated screenings, policy questionnaires, and/or
11 time spent completing the onboarding process including but not limited to reviewing various
12 documents and policies provided by DEFEDANTS. Based on information and belief, this work time
13 was completed off-the-clock and was not compensated.

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

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

23 55. For example, as explained above, DEFENDANTS' time records and/or wage
24 statements for PLAINTIFF evidence the rounding of PLAINTIFF's total hours worked to at least
25 the nearest half and/or whole hour, resulting in the failure to pay PLAINTIFF for all hours worked
26 and the underpayment of wages owed to PLAINTIFF. Based on information and belief,
27 DEFENDANTS also rounded the total hours worked of other Aggrieved Employees during most if
28 not all pay periods during the PAGA Period, resulting in the failure to pay Aggrieved Employees

1 for all hours worked, among other violations of the Labor Code described herein.

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

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

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

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

22 60. Additionally, DEFENDANTS also violated California's overtime laws as to those
23 Aggrieved Employees that were subject to an Alternative Workweek Schedule (AWS).

24 61. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
25 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
26 and/or implemented in accordance with the requirements of California law and/or DEFENDANTS
27 failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws,
28 including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor

1 Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an
2 AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

3 (C) Election Procedures Election procedures for the adoption and repeal of alternative
4 workweek schedules require the following: (1) Each proposal for an alternative workweek
5 schedule shall be in the form of a written agreement proposed by the employer. The proposed
6 agreement must designate a regularly scheduled alternative workweek in which the specified
7 number of workdays and work hours are regularly recurring. The actual days worked within
8 that alternative workweek schedule need not be specified. The employer may propose a
9 single work schedule that would become the standard schedule for workers in the work unit,
10 or a menu of work schedule options, from which each employee in the unit would be entitled
11 to choose. If the employer proposes a menu of work schedule options, the employee may,
12 with the approval of the employer, move from one menu option to another. (2) In order to
13 be valid, the proposed alternative workweek schedule must be adopted in a secret ballot
14 election, before the performance of work, by at least a two-thirds (2/3) vote of the affected
15 employees in the work unit. The election shall be held during regular working hours at the
16 employees' work site. For purposes of this subsection, "affected employees in the work unit"
17 may include all employees in a readily identifiable work unit, such as a division, a
18 department, a job classification, a shift, a separate physical location, or a recognized
19 subdivision of any such work unit. A work unit may consist of an individual employee as
20 long as the criteria for an identifiable work unit in this subsection is met. (3) Prior to the
21 secret ballot vote, any employer who proposed to institute an alternative workweek schedule
22 shall have made a disclosure in writing to the affected employees, including the effects of
23 the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure
24 shall include meeting(s), duly noticed, held at least 14 days prior to voting, for the specific
25 purpose of discussing the effects of the alternative workweek schedule. An employer shall
26 provide that disclosure in a non- English language, as well as in English, if at least five (5)
27 percent of the affected employees primarily speak that non-English language. The employer
28 shall mail the written disclosure to employees who do not attend the meeting. Failure to

1 comply with this paragraph shall make the election null and void. (4) Any election to
2 establish or repeal an alternative workweek schedule shall be held at the work site of the
3 affected employees. The employer shall bear the costs of conducting any election held
4 pursuant to this section. Upon a complaint by an affected employee, and after an
5 investigation by the Labor Commissioner, the Labor Commissioner may require the
6 employer to select a neutral third party to conduct the election. (5) Any type of alternative
7 workweek schedule that is authorized by the Labor Code may be repealed by the affected
8 employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot
9 election shall be held and a two-thirds (2/3) vote of the affected employees shall be required
10 to reverse the alternative workweek schedule. The election to repeal the alternative
11 workweek schedule shall be held not more than 30 days after the petition is submitted to the
12 employer, except that the election shall be held not less than 12 months after the date that
13 the same group of employees voted in an election held to adopt or repeal an alternative
14 workweek schedule. The election shall take place during regular working hours at the
15 employees' work site. If the alternative workweek schedule is revoked, the employer shall
16 comply within 60 days. Upon proper showing of undue hardship, the Division of Labor
17 Standards Enforcement may grant an extension of time for compliance. (6) Only secret
18 ballots may be cast by affected employees in the work unit at any election held pursuant to
19 this section. The results of any election conducted pursuant to this section shall be reported
20 by the employer to the Office of Policy, Research and Legislation within 30 days after the
21 results are final, and the report of election results shall be a public document. The report
22 shall include the final tally of the vote, the size of the unit, and the nature of the business of
23 the employer. (7) Employees affected by a change in the work hours resulting from the
24 adoption of an alternative workweek schedule may not be required to work those new work
25 hours for at least 30 days after the announcement of the final results of the election. (8)
26 Employers shall not intimidate or coerce employees to vote either in support of or in
27 opposition to a proposed alternative workweek.

28 62. No employees shall be discharged or discriminated against for expressing opinions

1 concerning the alternative workweek election or for opposing or supporting its adoption or repeal.
2 However, nothing in this section shall prohibit an employer from expressing his/her position
3 concerning that alternative workweek to the affected employees. A violation of this paragraph shall
4 be subject to Labor Code § 98 et seq.

5 63. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to
6 comply with the above procedures, and thus, failed to properly institute an alternative workweek for
7 the purpose of obtaining a lawful exemption from overtime premiums for its mandated alternative
8 workweek schedule. Based on information and belief, DEFENDANTS also failed to report the
9 results to the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the
10 purported election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage
11 Orders. This conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the
12 Applicable Wage Orders. These violations subject employer to civil penalties under Labor Code §§
13 558 and 2699, and All Applicable Wage Orders. Each violation of each Labor Code section and
14 Wage Order provision results in a separate civil penalty, for each Aggrieved Employee, for each
15 pay period during which the referenced statutes and Wage Order provisions were violated.

16 64. Moreover, to the extent there was an AWS that was properly adopted,
17 DEFENDANTS violated California's overtime laws as to Aggrieved Employees that were subject
18 to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the
19 agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee
20 to work fewer hours than those that are regularly scheduled by the agreement, the employer shall
21 pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's
22 regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is
23 required to work the reduced hours." See Section 3 of all applicable Wage Orders.

24 65. Based on information and belief, at times during Aggrieved Employees' respective
25 employments by DEFENDANTS, Aggrieved Employees worked subject to an alternative work
26 week schedule. Based on information and belief, at times, Aggrieved Employees that were subject
27 to an AWS, were sent home early and/or worked less hours than those that were scheduled under
28 the AWS. On such shortened shifts, Aggrieved Employees were entitled to overtime pay at 1.5 times

1 the regular rate of pay after the first eight hours of work. Instead, DEFENDANTS paid Aggrieved
2 Employees their base rate for all hours worked on the shortened shift(s) in violation of the alternative
3 workweek schedule, and in violation of California Labor Code section 510, the applicable Wage
4 Order, and Labor Code section 1198. As such, Aggrieved Employees that were subject to an AWS
5 were also deprived of all owed overtime wages when required to work shortened shifts.

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

15 **67.** For example, based on information and belief, at times, Aggrieved Employees were
16 suffered, permitted and/or required to take interrupted, shortened and/or late meal periods (i.e. after
17 the fifth hour of work) and/or work through their meal period completely due to the need to assist
18 patients, prepare rooms, perform administrative tasks, respond to work-related communications
19 and/or complete other work tasks.

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

25 **69.** Based on information and belief, DEFENDANTS implemented policies and/or
26 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
27 during unpaid meal periods.

28 **70.** Based on information and belief, DEFENDANTS required Aggrieved Employees to

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

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

10 72. Moreover, based on information and belief, Aggrieved Employees who worked shifts
11 of more than ten hours did not receive a second legally compliant thirty (30) minute meal perio

12 73. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
13 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
14 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
15 did DEFENDANTS have any sort of compliant policy in practice.

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

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

26 76. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
27 additional hour of wages at their respective regular rates of compensation for each workday a lawful
28 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for

each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

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

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

79. Based on information and belief, DEFENDANTS did not have a have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice.

80. For example, based on information and belief, at times, Aggrieved Employees were suffered, permitted and/or required to work through their rest periods, take interrupted and/or shortened rest periods and/or were not relieved of all duties and DEFENDANTS' control during purported rest periods, in violation of California rest period law.

81. For example, based on information and belief, at times, Aggrieved Employees had their rest periods interrupted, cut short and/or had to work through their rest periods completely due to the need to assist patients, prepare rooms, perform administrative tasks, respond to work-related communications and/or complete other work tasks.

82. Moreover, on information and belief, DEFENDANTS failed to authorize and permit rest periods that were a "net" ten minutes in a suitable rest area and instead, to the extent rest periods were provided at all, limited Aggrieved Employees to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving, in violation of California rest period law. DEFENDANTS' failure to communicate that the rest period is a net ten minutes deprived

1 Aggrieved Employees of their rights to a full rest period, as such as policy only relieves Aggrieved
2 Employees from their workstation for ten minutes to travel to and from a rest area and be back at
3 the workstation by the end of that ten minutes.

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

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

10 85. Based on information and belief, DEFENDANTS implemented policies and/or
11 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
12 DEFENDANTS' control during rest periods.

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

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

23 88. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
24 provides as follows:

25 89. (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 90. 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, Aggrieved Employees reported to work for a scheduled shift but
8 were sent home and/or were not put to work and were not paid all owed reporting time pay wages
9 in accordance with California law.

10 91. 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 92. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC
16 Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the
17 Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the
18 toilet rooms and shall be available to employees during work hours."

19 93. DEFENDANTS' locations/facilities are generally similar in layout and design, and
20 there was, and continues to be, space that allows for a resting facility that employees may use to
21 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
22 Employees with a resting facility within DEFENDANTS' facilities/locations with reasonable or no
23 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a
24 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to
25 resting, including but not limited to leaning up against the wall, or search for facilities outside of
26 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
27 vehicles.

28 94. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities

1 during their hours of work, particularly during meal and/or rest periods.

2 95. DEFENDANTS' failure to provide suitable resting facilities to Aggrieved
3 Employees violated and continue to violate the applicable Wage Order, section 13(B) and the
4 California Labor Code, including but not limited to section 1198.

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

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

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

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

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

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

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

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

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

20 105. **Failure to Produce Employment Records.** Based on information and belief,
21 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
22 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
23 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, on or around February
24 21, 2023, PLAINTIFF, through counsel, sent a written request for payroll and personnel records to
25 DEFENDANTS. Yet, DEFENDANTS failed to timely produce complete records, including but not
26 limited to, wage statements and time records, within the time periods delineated by California labor
27 law. Based on information and belief, DEFENDANTS failed and continues to fail to timely produce
28 complete payroll and personnel records when requested by other Aggrieved Employees. Based on

1 information and belief, DEFENDANTS failed and continue to fail to timely produce complete time,
2 pay, and personnel records when requested by other Aggrieved Employees.

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

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

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

23 109. Based on information and belief, DEFENDANTS shifted the costs of doing business
24 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
25 to, the purchase and/or maintenance of uniforms/work clothing/personal protective/safety gear, the
26 use of Aggrieved Employees' personal mobile phones, internet and/or data usage for work-related
27 purposes, including but not limited to, to receive and respond to work-related messages and/or phone
28 calls.

1 110. For example, based on information and belief, Aggrieved Employees were required
2 to receive/make work-related calls and/or messages from/to their personal cell phones/mobile
3 devices but DEFENDANTS did not provide Aggrieved Employees with any reimbursement and/or
4 the legally mandated reimbursement for DEFENDANTS' business use of their personal cell
5 phones/mobile devices.

6 111. For example, DEFENDANTS required PLAINTIFF to download and regularly use
7 an employee timekeeping application on his personal cell phone/mobile device but did not provide
8 PLAINTIFF with any and/or the legally mandated reimbursement for these business expenses,
9 including but not limited to, increased data plan charges and/or other expenses incurred as a result
10 of DEFENDANTS' business use of his cellphone.

11 112. Based on information and belief, Aggrieved Employees were not reimbursed for the
12 cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
13 protective/safety gear (e.g., scrubs and/or face masks).

14 113. Additionally, based on information and belief, Aggrieved Employees were not
15 reimbursed and/or not reimbursed in full for the business use of their personal vehicles, including
16 mileage, wear and tear, and gas when they were required to drive between DEFENDANTS'
17 clinics/offices/facilities, and/or otherwise use their personal vehicles in carrying out the duties
18 assigned to them by DEFENDANTS. As such, DEFENDANTS failed to compensate Aggrieved
19 Employees at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in
20 effect during the relevant period.

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

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

1 2802.

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

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

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

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

1 wages.

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

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

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

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

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

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

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

28 125. Based on information and belief, DEFENDANTS failed to provide Aggrieved

1 Employees with suitable seating, and when such employees were not engaged in duties which
2 required them to stand, no seating was placed in reasonable proximity to their workstations.

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

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

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

18 129. Upon separation of employment, Aggrieved Employees' final paychecks were not
19 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
20 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
21 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
22 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
23 accrued rates. For example, PLAINTIFF provided notice of resignation on or around January 31,
24 2023, which was confirmed received by DEFENDANTS on or around same day. Nevertheless,
25 DEFENDANTS did not furnish PLAINTIFF with PLAINTIFF's final paycheck until at least one
26 (1) week following the separation of PLAINTIFF's employment, and PLAINTIFF's late final
27 paycheck once provided was devoid of all wages owed, including but not limited to, all owed
28 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or

1 paid time off wages at the properly accrued rates.

2 130. Based on further information and belief, DEFENDANTS failed to timely provide all
3 owed wages immediately upon discharge of employment. Based on information and belief, at times,
4 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
5 Aggrieved Employees would not be called in for work for longer than a single pay period due to
6 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
7 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
8 the end of such periods of employment, in violation of including but not limited to Labor Code
9 section 201-202.

10 131. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

11 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

12 132. Based on information and belief, DEFENDANTS required Aggrieved Employees to
13 agree in writing to unlawful conditions of employment including, but not limited to, unlawful non-
14 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements,
15 unlawful choice of forum provisions, unlawful releases and/or waivers and/or unlawful criminal
16 and/or financial checks as a condition of obtaining and/or continuing employment in violation of
17 Labor Code section 432.5.

18 133. Based upon information and belief, DEFENDANTS required Aggrieved Employees
19 to sign unlawful non-compete/non-solicitation agreements as a condition of hire/maintaining
20 employment, in violation of California law, including but not limited to, California Business &
21 Professions Code section 16600. By having Aggrieved Employees to sign off on the illegal non-
22 compete/non-solicitation agreements as a condition of employment, DEFENDANTS violated, inter-
23 alia, Labor Code section 432.5 (stating that "no employer...shall require any employee or applicant
24 for employment to agree, in writing, to any term or condition which is known by such employer...to
25 be prohibited by law.").

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

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

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

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

22 137. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
23 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
24 section 432.5.

25 138. Based on further information and belief, DEFENDANTS also required Aggrieved
26 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
27 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
28 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by

1 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

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

7 Unlawful Inquires into Criminal History

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

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

17 Unlawful PAGA Waiver

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

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

27 145. Moreover, the California Supreme Court has ruled that a court cannot compel
28 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an

1 individual PAGA claim. *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is
2 no individual component to a PAGA action because ‘every PAGA action ... is a representative
3 action on behalf of the state.’”)

4 146. Upon information and belief, DEFENDANTS required Aggrieved Employees to
5 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
6 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS
7 required written agreement to an unlawful provision as a condition of employment which is a
8 violation of labor code section 432.5.

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

13
14 **FIRST CAUSE OF ACTION**
15 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
16 **2698, ET SEQ.**

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

19 148. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

20 **Failure to Keep Accurate Records**

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

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

151. DEFENDANTS’ failure to keep “accurate and complete” payroll records for

1 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
2 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
3 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
4 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
5 period during which the referenced statutes and Wage Order provisions were violated.¹

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

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

13 153. Section (b) of Labor Code section 226 further requires employers to "afford current
14 and former employees the right to inspect or receive a copy of records pertaining to their
15 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
16 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
17 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
18 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
19 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
20 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
21 the employer. Lab. Code section 226(f).

22 154. Personnel Records. In addition to their right to time and pay records, employees, and
23 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
24 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code

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

1 section 432 further specifies that employers must furnish copies of all employment records bearing
2 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
3 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days
4 from the date the employer receives a written request." An employer's failure to comply within this
5 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
6 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

7 155. Based on information and belief, DEFENDANTS fail to timely produce or make
8 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant
9 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
10 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

11 **Meal Period Violations**

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

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

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

28 159. Employers must pay employees an additional hour of wages at the employees'

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

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

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

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

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

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

28 165. These unlawful meal period policies and practices result in violations of Labor Code
37
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
2 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
3 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
4 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

5 **Rest Period Violations**

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

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

periods] to its employees.”).

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

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

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

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

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

Failure to Provide Suitable Resting Facilities

173. Per section 13 of all applicable IWC Wage Orders, including but not limited to Wage Order 4, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

1 174. DEFENDANTS' locations/facilities are generally similar in layout and design, and
2 there was, and continues to be, space that allows for a resting facility that employees may use to
3 cease work and recover during meal or rest periods. DEFENDANTS could have provided
4 PLAINTIFF and Aggrieved Employees with a resting facility within DEFENDANTS'
5 facilities/locations with reasonable or no modification, but instead denied and continues to deny,
6 employees with suitable areas to rest (e.g. a breakroom). As a result, PLAINTIFF and other
7 Aggrieved Employees were forced to adjust to areas not conducive to resting, including but not
8 limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises
9 which are not designated or reserved for their rest, such as their personal vehicles.

10 175. DEFENDANTS did not provide PLAINTIFF and Aggrieved Employees with
11 suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

12 176. DEFENDANTS' failure to provide suitable resting facilities to PLAINTIFF and
13 Aggrieved Employees violated and continue to violate the applicable Wage Order, section 13(B)
14 and the California Labor Code, including but not limited to section 1198.

15 **Minimum and Overtime Wage Violations**

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

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

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

8 180. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
9 Aggrieved Employees for all hours worked.

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

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

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

27 184. As explained above, as to Aggrieved Employees that worked subject to an AWS,
28 DEFENDANTS either failed to properly implement the AWS and/or DEFENDANTS paid

1 Aggrieved Employees their base rate for all hours worked on shortened shift(s), in violation of the
2 AWS, resulting in the underpayment of overtime wages owed to Aggrieved Employees.

3 185. This conduct results in violations of Labor Code sections 218.5, 510, 511, 558, 558.1,
4 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
5 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
6 Wage Orders, section 20.

7 **Statutory Wage Violations**

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

19 **Refusal to Make Payment**

20 187. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
21 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
22 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
23 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
24 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
25 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
26 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
27
28

each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

Standard Conditions of Labor Violations

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

Business Expense Violations

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

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

² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty 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).

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

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

7 193. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
8 full reimbursement for all reasonable expenses associated with carrying out their duties required
9 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
10 expenses in violation of Labor Code section 2802.

11 194. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
12 Employees have suffered injury in that they were not completely reimbursed as mandated by
13 California law.

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

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

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

25 **Wage Statement Violations**

26 198. California law requires every employer semi-monthly or at the time of each payment
27 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
28 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of

1 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
2 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
3 is paid; (7) the name of the employee and only the last four digits of his or her social security number
4 or an employee identification number other than a social security number; (8) the name and address
5 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
6 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

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

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

25 201. As explained above, wage statements issued by DEFENDANTS failed to list the
26 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
27 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
28 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices

1 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
2 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
3 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

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

14 205. DEFENDANTS' failure to accurately list all hours worked on all wage statements
15 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
16 Employees over whether they received all wages owed to them.

17 206. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
18 they could not easily determine whether they received all wages owed to them and whether they
19 were paid for all hours worked.

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

23 208. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
24 Aggrieved Employees with accurate, itemized wage statements.

25 209. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
26 Employees have suffered injury. The absence of accurate information on their wage statements has
27 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
28 mathematical computations to determine the amount of wages owed, and will cause difficulty and

1 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
2 submission of inaccurate information about wages and amounts deducted from wages to state and
3 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
4 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
5 and pay records than if DEFENDANT had complied with its legal obligations.

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

9 **Unlawful Deductions**

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

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

24 **Reporting Time Pay Violations.**

25 213. Section 5 of all applicable IWC Wage Orders, provides as follows:

26 214. (A) Each workday an employee is required to report for work and does report, but is
27 not put to work or is furnished less than half said employee's usual or scheduled day's work, the

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

1 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
2 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less
3 than the minimum wage. (B) If an employee is required to report for work a second time in any one
4 workday and is furnished less than two (2) hours of work on the second reporting said employee
5 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
6 minimum wage.

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

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

17 **Seating Violations**

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

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

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

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

28 219. Suitable seating is one of the worker protections covered by California's Wage

1 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
2 construed to effectuate the goal of protecting the comfort and welfare of employees. Brinker
3 Restaurant Corp. v. Superior Court, 53 Cal.4th 1004, 1027 (2012).

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

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

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

19 **Sick Leave Violations**

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

27 224. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
28 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor

1 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
2 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
3 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

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

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

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

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

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

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

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

1 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
2 Labor Code section 248.6.

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

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

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

15 **Untimely Payment of Final Wages**

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

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

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

7 237. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
8 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
9 256.

10 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

19 239. Based upon information and belief, DEFENDANTS required Aggrieved Employees
20 to sign unlawful non-compete/non-solicitation agreements as a condition of hire/maintaining
21 employment, in violation of California law, including but not limited to, California Business &
22 Professions Code section 16600. By having Aggrieved Employees to sign off on the illegal non-
23 compete/non-solicitation agreements as a condition of employment, DEFENDANTS violated, inter-
24 alia, Labor Code section 432.5 (stating that “no employer...shall require any employee or applicant
25 for employment to agree, in writing, to any term or condition which is known by such employer...to
26 be prohibited by law.”).

27 240. Moreover, the California Labor Code places certain procedural and substantive limits
28 on an employers’ ability to conduct employee background checks and on how employers can use

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

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

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

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

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

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

28 Unlawful Inquires into Criminal History

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

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

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

15 Unlawful PAGA Waiver

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

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

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

1 action on behalf of the state.”)

2 252. Upon information and belief, DEFENDANTS required Aggrieved Employees to
3 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
4 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS
5 required written agreement to an unlawful provision as a condition of employment which is a
6 violation of labor code section 432.5.

7 253. Under the provisions of PAGA and the above mentioned Labor Code sections,
8 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
9 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
10 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
11 interpretations of these laws by California Courts and administrative bodies, as well as any other
12 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

22 254. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
23 PLAINTIFF is entitled to recover civil penalties, costs, and attorney’s fees.

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1 **PRAYER FOR RELIEF**

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

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

11
12 Dated: September 20, 2023

CROSNER LEGAL, PC

13
14 By: Samantha Smith
15 Brandon Brouillette, Esq.
16 Samantha Smith, Esq.
17 Zachary M. Crosner, Esq.
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