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

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 ARACELI PULIDO, on behalf of the State of
California, and others similarly situated and
aggrieved,

13 Plaintiff,

14
15 v.

16 CAMBRIAN HOMECARE, a California
17 Corporation; and DOES 1-100, inclusive,

18 Defendants.

Case No.: **23STCV14458**

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

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

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

21 **THE PARTIES**

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

24 5. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title
25 of caregiver, in-home caregiver and/or a similar title from in or around September 2020 through in
26 or around June 2022.

27 6. Defendant CAMBRIAN HOMECARE is a California Corporation that, at all
28 relevant times, was authorized to do business within the State of California and is doing business in

1 the State of California.

2 7. DEFENDANTS own, operate, manage a business that provides home care services
3 for seniors and persons with disabilities. DEFENDANTS provides home care services to clients
4 throughout California, including but not limited to clients located in Los Angeles County.

5 8. 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 9. 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 10. 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 relationship. Supervision of the work, in the specific sense of exercising control over how services

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

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

18 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
19 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
20 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
21 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
22 policies and practices regardless of the location(s) where they worked. Among other things,
23 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
24 in DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control
25 over the day-to-day operations and employment matters, including the power to hire and fire, set
26 schedules, issue employee policies, and determine rates of compensation across its locations in
27 California; (3) DEFENDANTS utilize the same policies and procedures for all California
28 employees, including issuing the same employee handbooks and other form agreements; (4)

1 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
2 employment matters; and, (6) DEFENDANTS share employees.

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

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

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

28 16. PLAINTIFF is informed and believes that DEFENDANTS exercised the same

1 control over, applied the same policies and practices, and engaged in the same acts and omissions
2 with regard to the other Aggrieved Employees.

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

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

12 **PAGA ALLEGATIONS**

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

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

20 20. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
21 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
22 limitations period and suffered one or more of the Labor Code violations set forth herein.
23 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
24 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
25 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
26 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by
27 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
28 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations

1 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
2 *Id.* at 760-761.

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

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

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

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

14 **FACTUAL ALLEGATIONS**

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

19 25. PLAINTIFF worked for DEFENDANTS as a caregiver, in-home caregiver and/or
20 similar title(s) and/or position(s) from in or around September 2020 through on or around June 2022.
21 PLAINTIFF typically worked shifts lasting at least four (4) to five (5) hours in length at least four
22 (4) days per week and typically worked at least nine (9) hours per day at least once to twice per
23 week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as
24 hours worked.

25 26. PLAINTIFF’s job duties included but were not limited to, bathing and feeding the
26 client, grocery shopping, mopping floors, cleaning bathrooms, watering plants, doing laundry,
27 folding clothes, making beds, among other job duties. PLAINTIFF and other Aggrieved Employees
28 typically spent more than twenty percent of their shifts performing housekeeping and/or other non-

1 personal-attendant duties, such as but not limited to, grocery shopping, mopping floors, cleaning
2 bathrooms, watering plants, doing laundry, folding clothes, making beds, among other non-personal
3 attendant job duties. The remainder of their shifts were typically spent attending to the
4 patient(s)/client(s).

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

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

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

20 30. Based on information and belief, Aggrieved Employees were not paid for all hours
21 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
22 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
23 the clock work policies and/or practices. For example, based on information and belief, Aggrieved
24 Employees were often required after working at their scheduled facility location and/or at one
25 client's home to cover a shift and/or work a second shift at another of DEFENDANTS'
26 facilities/locations and/or at a second client's home but were not compensated for the time spent
27 driving and/or traveling to the second facility, client's home and/or second location resulting in off-
28 the-clock work and the underpayment of wages owed to Aggrieved Employees.

1 31. For example, approximately at least once to twice per week, PLAINTIFF was
2 required to work at least five (5) hours at one job site/client's home and then drive to another client's
3 home and/or job site and work another shift lasting at least four (4) hours long, however,
4 DEFENDANTS failed to compensate PLAINTIFF for all work time during these shifts, including
5 but not limited to, time spent traveling between DEFENDANTS' locations and/or facilities and/or
6 between job sites and/or clients' homes. PLAINTIFF estimates this uncompensated off-the-clock
7 work in the form of traveling between DEFENDANTS' locations and/or facilities and/or between
8 job sites and/or clients' homes, resulted in at least approximately twenty (20) minutes of off-the-
9 clock work at least once to twice per week during the relevant period.

10 32. Based on further information and belief, DEFENDANTS electronic employee time-
11 keeping system/app at times malfunctioned such that Aggrieved Employees were frequently
12 required to either reinitiate the system prior to being able to clock in and/or were unable to clock in
13 at all for the start of their shifts and/or clock back in from meal periods, resulting in consistent off-
14 the-clock work and the underpayment of minimum and overtime wages owed to Aggrieved
15 Employees. Based on information and belief, Aggrieved Employees experienced the same issues
16 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
17 control was not recorded and not compensated and resulted in unpaid minimum wages.

18 33. Based on information and belief, Aggrieved Employees were also pressured to
19 complete at least some of their work tasks off-the-clock in order to meet DEFENDANTS' goals and
20 expectations. For example, based on information and belief, Aggrieved Employees were required
21 to complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-
22 related phone calls and/or messages they received to their phones and were required to respond to,
23 including but not limited to, communications from supervisors regarding scheduling and/or other
24 work tasks, resulting in the underpayment of wages owed to Aggrieved Employees.

25 34. Based on information and belief, DEFENDANTS failed to pay Aggrieved
26 Employees split shift compensation whenever their work schedules were interrupted by non-paid
27 non-working periods established by DEFENDANTS, which resulted in a violation of the applicable
28 Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift,

1 one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that
2 workday...).

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

8 36. Based in information and belief, DEFENDANTS implemented a time-rounding
9 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
10 compensable time because the time-rounding system implemented by DEFENDANTS would
11 almost always, if not always, result in understating actual compensable work time. For example,
12 DEFENDANTS' pay records for PLAINTIFF for including but not limited to the following dates
13 show DEFENDANTS rounded PLAINTIFF's total hours worked to at least the nearest quarter, half
14 and/or whole hour: 6/13/22, 6/14/22, 6/15/22, 6/16/22, 6/17/22, and 6/18/22. Based on information
15 and belief, DEFENDANTS rounded PLAINTIFF's and other Aggrieved Employees' total hours
16 worked to at least the nearest quarter, half and/or whole hour during most if not all pay periods
17 during the relevant period.

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

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

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

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

10 41. Based on information and belief, DEFENDANTS sometimes paid Aggrieved
11 Employees multiple rates of base pay in one workweek but failed to incorporate all multiple rates
12 of base pay into the regular rate of pay for purposes of calculating the owed overtime rate. For
13 example, based on information and belief, at times, Aggrieved Employees earned multiple base pay
14 rates during the same workweek, yet, DEFENDANTS failed to incorporate all/both base pay rates
15 into the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the
16 miscalculation and underpayment of overtime wages owed to PLAINTIFF. Based on information
17 and belief, DEFENDANTS similarly failed to incorporate multiple base rates of pay earned in a
18 workweek by other Aggrieved Employees into the regular rate of pay used to calculate the owed
19 overtime rate(s), resulting in unpaid wages to Aggrieved Employees.

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

22 43. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
23 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
24 and/or implemented in accordance with the requirements of California law and/or DEFENDANTS
25 failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws,
26 including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor
27 Code section 1198. For example, based on information and belief, there is no record of an AWS
28 election for PLAINTIFF's assigned workplace. Based on information and belief, DEFENDANTS

1 failed to properly adopt an AWS in accordance with Labor Code section 511 and 1199, and the
2 applicable Wage Order:

3 44. (C) Election Procedures Election procedures for the adoption
4 and repeal of alternative workweek schedules require the following:

5 (1) Each proposal for an alternative workweek schedule shall be in
6 the form of a written agreement proposed by the employer. The
7 proposed agreement must designate a regularly scheduled alternative
8 workweek in which the specified number of workdays and work hours
9 are regularly recurring. The actual days worked within that alternative
10 workweek schedule need not be specified. The employer may propose
11 a single work schedule that would become the standard schedule for
12 workers in the work unit, or a menu of work schedule options, from
13 which each employee in the unit would be entitled to choose. If the
14 employer proposes a menu of work schedule options, the employee
15 may, with the approval of the employer, move from one menu option
16 to another. (2) In order to be valid, the proposed alternative workweek
17 schedule must be adopted in a secret ballot election, before the
18 performance of work, by at least a two-thirds (2/3) vote of the affected
19 employees in the work unit. The election shall be held during regular
20 working hours at the employees' work site. For purposes of this
21 subsection, "affected employees in the work unit" may include all
22 employees in a readily identifiable work unit, such as a division, a
23 department, a job classification, a shift, a separate physical location,
24 or a recognized subdivision of any such work unit. A work unit may
25 consist of an individual employee as long as the criteria for an
26 identifiable work unit in this subsection is met. (3) Prior to the secret
27 ballot vote, any employer who proposed to institute an alternative
28 workweek schedule shall have made a disclosure in writing to the

1 affected employees, including the effects of the proposed
2 arrangement on the employees' wages, hours, and benefits. Such a
3 disclosure shall include meeting(s), duly noticed, held at least 14 days
4 prior to voting, for the specific purpose of discussing the effects of
5 the alternative workweek schedule. An employer shall provide that
6 disclosure in a non- English language, as well as in English, if at least
7 five (5) percent of the affected employees primarily speak that non-
8 English language. The employer shall mail the written disclosure to
9 employees who do not attend the meeting. Failure to comply with this
10 paragraph shall make the election null and void. (4) Any election to
11 establish or repeal an alternative workweek schedule shall be held at
12 the work site of the affected employees. The employer shall bear the
13 costs of conducting any election held pursuant to this section. Upon a
14 complaint by an affected employee, and after an investigation by the
15 Labor Commissioner, the Labor Commissioner may require the
16 employer to select a neutral third party to conduct the election. (5)
17 Any type of alternative workweek schedule that is authorized by the
18 Labor Code may be repealed by the affected employees. Upon a
19 petition of one-third (1/3) of the affected employees, a new secret
20 ballot election shall be held and a two-thirds (2/3) vote of the affected
21 employees shall be required to reverse the alternative workweek
22 schedule. The election to repeal the alternative workweek schedule
23 shall be held not more than 30 days after the petition is submitted to
24 the employer, except that the election shall be held not less than 12
25 months after the date that the same group of employees voted in an
26 election held to adopt or repeal an alternative workweek schedule.
27 The election shall take place during regular working hours at the
28 employees' work site. If the alternative workweek schedule is

1 revoked, the employer shall comply within 60 days. Upon proper
2 showing of undue hardship, the Division of Labor Standards
3 Enforcement may grant an extension of time for compliance. (6) Only
4 secret ballots may be cast by affected employees in the work unit at
5 any election held pursuant to this section. The results of any election
6 conducted pursuant to this section shall be reported by the employer
7 to the Office of Policy, Research and Legislation within 30 days after
8 the results are final, and the report of election results shall be a public
9 document. The report shall include the final tally of the vote, the size
10 of the unit, and the nature of the business of the employer. (7)
11 Employees affected by a change in the work hours resulting from the
12 adoption of an alternative workweek schedule may not be required to
13 work those new work hours for at least 30 days after the
14 announcement of the final results of the election. (8) Employers shall
15 not intimidate or coerce employees to vote either in support of or in
16 opposition to a proposed alternative workweek.

17 45. No employees shall be discharged or discriminated against for
18 expressing opinions concerning the alternative workweek election or
19 for opposing or supporting its adoption or repeal. However, nothing
20 in this section shall prohibit an employer from expressing his/her
21 position concerning that alternative workweek to the affected
22 employees. A violation of this paragraph shall be subject to Labor
23 Code § 98 *et seq.*

24 46. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to
25 comply with the above procedures, and thus, failed to properly institute an alternative workweek for
26 the purpose of obtaining a lawful exemption from overtime premiums for its mandated 9 days/80
27 hours schedule. Based on information and belief, DEFENDANTS also failed to report the results
28 to the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the purported

1 election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This
2 conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage
3 Orders. These violations subject employer to civil penalties under Labor Code §§ 558 and 2699,
4 and All Applicable Wage Orders. Each violation of each Labor Code section and Wage Order
5 provision results in a separate civil penalty, for each Aggrieved Employee, for each pay period
6 during which the referenced statutes and Wage Order provisions were violated.

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

16 48. Based on information and belief, at times during the relevant period, Aggrieved
17 Employees worked subject to an alternative work week schedule in which they worked eight (8)
18 nine (9)-hour shifts and one eight (8) hours shift over a two work-week period. Based on information
19 and belief, at times, Aggrieved Employees were subject to an AWS, were sent home early and/or
20 worked less hours than those that were scheduled under the AWS. On such shortened shifts,
21 Aggrieved Employees were entitled to overtime pay at 1.5 times the regular rate of pay after the
22 first eight hours of work. Instead, DEFENDANTS paid Aggrieved Employees their base rate for all
23 hours worked on the shortened shift(s) in violation of the alternative workweek schedule, and in
24 violation of California Labor Code section 510, the applicable Wage Order, and Labor Code section
25 1198. As such, Aggrieved Employees that were subject to an AWS were also deprived of all owed
26 overtime wages when required to work shortened shifts.

27 49. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
28 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.

1 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
2 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
3 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
4 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
5 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
6 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
7 completely. For example, PLAINTIFF worked shifts lasting at least approximately nine (9) hours
8 at least approximately once to twice per week during the relevant period but was typically not
9 afforded with any version of a meal period during those shifts. Based on information and belief,
10 other Aggrieved Employees also consistently worked shifts of five- and one-half hours or more
11 without being provided any version of a meal period due to the nature and constraints of their job
12 duties, lack of relief works, the need to respond to work communications and/or complete other
13 work tasks.

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

19 51. Based on information and belief, DEFENDANTS implemented policies and/or
20 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
21 during unpaid meal periods.

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

26 53. Based on information and belief, despite DEFENDANTS' failure to provide lawful
27 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
28 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically

1 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
2 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
3 Employees did not receive lawful meal periods.

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

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

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

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

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

27 59. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
28 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every

1 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
2 middle of the work period, as required by law.

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

7 61. Based on information and belief, DEFENDANTS did not have a have a compliant
8 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
9 practice. For example, during her employment, PLAINTIFF was rarely if ever afforded a full ten-
10 minute off-duty rest period due to the need to attend to clients, complete housekeeping tasks,
11 respond to work-related communications, drive to her next assigned location/client home and/or
12 complete other work tasks. For example, when working shifts lasting longer than three- and one-
13 half hours, PLAINTIFF was usually not provided with any version of a rest period and/or was not
14 provided with any legally compliant rest period. Similarly, when working her shifts typically lasting
15 at least nine (9) hours, PLAINTIFF was usually not provided with any version of a rest period and/or
16 was not provided with any legally compliant rest period.

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

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

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

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

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

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

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

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

28 70. Moreover, based on information and belief, DEFENDANTS issued wage statements

1 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among
2 other things, failing to list the correct name and/or address of the legal entity that is the employer,
3 in violation of Labor Code section 226(a)(8).

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

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

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

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

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

25 76. **Reporting Time Pay Violations.** Aggrieved Employees were not paid reporting
26 time wages in accordance with California law, including but not limited to the applicable IWC Wage
27 Order. For example, based on information and belief, at times, Aggrieved Employees reported to
28 work for a scheduled shift but were sent home and/or were not put to work and were not paid all

1 owed reporting time pay wages in accordance with California law.

2 **77. Failure to Produce Employment Records.** Based on information and belief,
3 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
4 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
5 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
6 counsel, sent a written request for payroll and personnel records to DEFENDANTS. Yet,
7 DEFENDANTS failed to timely produce complete records within the time periods delineated by
8 California labor law. Based on information and belief, DEFENDANTS failed and continues to fail
9 to timely produce complete payroll and personnel records when requested by other Aggrieved
10 Employees. Based on information and belief, DEFENDANTS failed and continue to fail to timely
11 produce complete time, pay, and personnel records when requested by other Aggrieved Employees.

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

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

26 **80. Unreimbursed Business Expenses.** Based on information and belief,
27 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
28 as a direct consequence of the performance of their job duties without providing reimbursement, in

1 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
2 Aggrieved Employees were improperly required to provide and maintain work tools that are
3 supposed to be the responsibility of the employer.

4 81. Based on information and belief, DEFENDANTS shifted the costs of doing business
5 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
6 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
7 including but not limited to , including but not limited to, use of PLAINTIFF's and other Aggrieved
8 Employees' personal mobile phones, data plan usage and charges, use of personal computer devices
9 and/or costs associated with the purchase and/or maintenance of work uniforms/clothing, shoes,
10 safety and/or protective gear (e.g., face masks). For example, based on information and belief
11 Aggrieved Employees frequently received work-related calls and/or messages to their personal
12 phone from managers and/or supervisors, including but not limited to, regarding scheduling/other
13 work tasks.

14 82. Also, DEFENDANTS required PLAINTIFF to utilize an application on her personal
15 cell phone/ mobile device to electronically clock in and out for her shifts. PLAINTIFF was not
16 reimbursed and/or not provided the legally mandated reimbursement for these business expenses.

17 83. Based on further information, DEFENDANTS required Aggrieved Employees to use
18 their personal vehicles for work, including but not limited to, for traveling between DEFENDANTS'
19 facilities/locations and/or between clients' homes/assigned locations for work without reimbursing
20 them for all vehicle expenses they incurred in connection therewith, including but not limited to,
21 cost of fuel, vehicle wear and tear, and mileage. For example, approximately at least once to twice
22 per week, PLAINTIFF was required to work at least five (5) hours at one job site/client's home and
23 then drive to another client's home and/or job site and work another shift lasting at least four (4)
24 hours long, however, DEFENDANTS failed to compensate PLAINTIFF for all work time during
25 these shifts, including but not limited to, time spent traveling between DEFENDANTS' locations
26 and/or facilities and/or between job sites and/or clients' homes. Based on information and belief,
27 while at times DEFENDANTS purported to reimburse for vehicle-related expenses,
28 DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees with full

1 reimbursement for all vehicle-related expenses they incurred in connection with having to use their
2 personal vehicles to perform their assigned job duties.

3 84. Moreover, based on information and belief, Aggrieved Employees were not
4 reimbursed for the cost of undergoing Covid testing, including but not limited to purchasing the test,
5 and/or the cost of traveling and/or using a personal vehicle to travel to and from a testing site.
6 Based on information and belief, at times, Aggrieved Employees also were required to use and did
7 use personal devices to perform work duties at home, such as but not limited to, completing
8 trainings/continued education courses and/or reviewing policies and/or other documents remotely
9 as mandated by DEFENDANTS.

10 85. Based on information and belief, DEFENDANTS regularly failed to reimburse and
11 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
12 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
13 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
14 assigned by DEFENDANTS.

15 86. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
16 for all reasonable expenses associated with carrying out their duties required that Aggrieved
17 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
18 2802.

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

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

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

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

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

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

1 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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

12 95. Upon separation of employment, Aggrieved Employees' final paychecks were not
13 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
14 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
15 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
16 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
17 accrued rates.

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

26 97. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

27 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

1 agree in writing to unlawful conditions of employment including but not limited to unlawful
2 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
3 violation of Labor Code section 432.5.

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

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

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

28 102. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or

1 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
2 section 432.5.

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

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

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

13 Unlawful Inquires into Criminal History

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

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

23 Unlawful PAGA Waiver

24 108. Additionally, based on information and belief, DEFENDANTS violated Labor Code
25 section 432.5 by requiring Aggrieved Employees to agree in writing to other unlawful agreements,
26 including but not limited to, an unlawful waiver of PAGA and or representative actions as a
27 condition of employment.

28 109. An action pursuant to PAGA “...is a representative action on behalf of the state”

1 *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements
2 purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and
3 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384
4 ("We conclude that where, as here, an employment agreement compels the waiver of representative
5 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.")

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

11 111. Upon information and belief, DEFENDANTS required Aggrieved Employees to
12 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
13 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS
14 required written agreement to an unlawful provision as a condition of employment which is a
15 violation of labor code section 432.5.

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

20 **FIRST CAUSE OF ACTION**
21 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
22 **2698, ET SEQ.**
23 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
24 **Defendants)**

25 113. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

26 **Failure to Keep Accurate Records**

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

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

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

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

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

19 118. Section (b) of Labor Code section 226 further requires employers to "afford current
20 and former employees the right to inspect or receive a copy of records pertaining to their
21 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
22 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
23 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
24 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A

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

1 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
2 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
3 the employer. Lab. Code section 226(f).

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

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

17 **Meal Period Violations**

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

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

26 123. Employers covered by any and all applicable IWC Wage Orders have an obligation
27 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
28 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is

1 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
2 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
3 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
4 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
5 provided”).

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

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

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

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

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

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

6 130. These unlawful meal period policies and practices result in violations of Labor Code
7 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
8 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
9 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
10 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

11 **Rest Period Violations**

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

26 132. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
27 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
28 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest

1 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
2 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
3 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
4 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
5 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
6 “onus is on the employer to clearly communicate the authorization and permission [to take rest
7 periods] to its employees.”).

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

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

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

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

27 137. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
28 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties

1 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

2 **Minimum and Overtime Wage Violations**

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

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

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

23 141. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
24 Aggrieved Employees for all hours worked.

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

1 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
2 Employees. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
3 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
4 and/or was not implemented in accordance with the requirements of California law and/or
5 DEFENDANTS failed to comply with the AWS and as such failed to pay all owed overtime wages.

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

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

17 145. This conduct alleged herein results in violations of Labor Code sections 218.5, 510,
18 511, 558, 558.1, 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject
19 DEFENDANTS to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and
20 all applicable IWC Wage Orders, section 20.

21 **Statutory Wage Violations**

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

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

5 **Refusal to Make Payment**

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

14 **Standard Conditions of Labor Violations**

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

23 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

1 expenses in violation of Labor Code section 2802.

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

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

9 **Wage Statement Violations**

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

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

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

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

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

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

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

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

26 165. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
27 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
28 Employees over whether they received all wages owed to them.

1 166. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
2 they could not easily determine whether they received all wages owed to them and whether they
3 were paid for all hours worked.

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

7 168. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
8 Aggrieved Employees with accurate, itemized wage statements.

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

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

21 **Unlawful Deductions**

22 171. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
23 an employee any part of wages theretofore paid by said employer to said employee." Based on
24 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
25 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
26 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
27 Section 2699.

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

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

7 **Reporting Time Pay Violations.**

8 173. Section 5 of all applicable IWC Wage Orders, provides as follows:

9 174. (A) Each workday an employee is required to report for work and does report, but is
10 not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the
11 employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two
12 (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less
13 than the minimum wage. (B) If an employee is required to report for work a second time in any one
14 workday and is furnished less than two (2) hours of work on the second reporting said employee
15 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
16 minimum wage.

17 175. Aggrieved Employees were not paid reporting time wages in accordance with
18 California law, including but not limited to the applicable IWC Wage Order. For example, based on
19 information and belief, at times, Aggrieved Employees reported to work for a scheduled shift but
20 were sent home and/or were not put to work and were not paid all owed reporting time pay wages
21 in accordance with California law.

22 176. Based on information and belief, DEFENDANTS have a policy and practice of
23 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
24 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS’ failure to
25 pay all reporting time wages to PLAINTIFF and Aggrieved Employees violated and continues to
26 violate the applicable Wage Order, and the California Labor Code, including but not limited to
27 section 1198.

28 **Sick Leave Violations**

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

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

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

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

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

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

27 183. On information and belief, PLAINTIFF alleges that all of these practices were
28 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

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

24 **Untimely Payment of Final Wages**

25 188. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
26 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
27 payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an
28 employee not having a written contract for a definite period quits his or her employment, his or her

1 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
2 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
3 to his or her wages at the time of quitting.”

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

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

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

19 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

26 193. The California Labor Code places certain procedural and substantive limits on an
27 employers’ ability to conduct employee background checks and on how employers can use the
28 information they obtain through those background checks. Labor Code section 1024.5 states that

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

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

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

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

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

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

27 Unlawful Inquires into Criminal History

28 199. Labor Code section 432.7 prohibits an employer from asking applicants about past

1 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
2 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
3 convictions on its employment application, in violation of California law.

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

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

14 Unlawful PAGA Waiver

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

19 203. 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.”)

25 204. 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.”)

2 205. 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.

7 206. 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, 511, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1,
10 1198, 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.

22 207. 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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PRAYER FOR RELIEF

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

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

Dated: June 21, 2023

CROSNER LEGAL, PC

By: 
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