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By _____, Deputy
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8 on behalf of the State of California,
9 and others similarly situated and aggrieved

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SACRAMENTO**

12 GARY WILLIAMS, on behalf of the State of
13 California, and others similarly situated and
aggrieved,

14 Plaintiff,

15 v.
16

17 TAXRESOURCES, INC., a Florida
18 Corporation; and DOES 1-100, inclusive,

19 Defendants.

Case No.:

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

BY FAX

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

7 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

23 **THE PARTIES**

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

26 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
27 DEFENDANTS as a non-exempt employee with a job title of customer service agent and/or similar
28 title(s) and/or position(s) from in or around January 2022 through in or around August 2022.

1 DEFENDANTS assigned PLAINTIFF to work, including but not limited to, remotely from
2 PLAINTIFF's home and/or at offices and/or other location(s) in California, including but not limited
3 to, location(s) in Citrus Heights, California.

4 6. DEFENDANTS are a Florida Corporation that, at all relevant times, were authorized
5 to do business within the State of California and are doing business in the State of California.

6 7. DEFENDANTS own, operate, manage and/or staff its employees to work at
7 location(s) in California, including but not limited to, including but not limited to offices and/or
8 other locations in Citrus Heights, California. DEFENDANTS operate under the name "TaxAudit"
9 and/or "Tax Audit." DEFENDANTS, through its locations serve the consumer goods and services
10 industry, specializing in including but not limited to, the provision of virtual professional tax relief
11 services.¹

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

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

28 ¹ See <https://www.taxaudit.com/>. Last visited on July 29, 2023.

1 **JOINT LIABILITY**

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

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

26 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
27 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
28 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices

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

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

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

1 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
2 collectively would evaluate their wage rates.

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

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

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

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

20 **PAGA ALLEGATIONS**

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

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

1 20. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
2 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
3 limitations period and suffered one or more of the Labor Code violations set forth herein.
4 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
5 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
6 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
7 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by
8 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
9 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
10 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
11 *Id.* at 760-761.

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

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

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

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

23 **FACTUAL ALLEGATIONS**

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

28 25. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
7
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 DEFENDANTS as a non-exempt employee with a job title of customer service agent and/or similar
2 title(s) and/or position(s) from in or around January 2022 through in or around August 2022.
3 DEFENDANTS assigned PLAINTIFF to work, including but not limited to, remotely from
4 PLAINTIFF's home and/or at offices and/or other location(s) in California, including but not limited
5 to, location(s) in Citrus Heights, California.

6 26. PLAINTIFF regularly worked at least eight (8) hours per day, at least five (5) days
7 per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as
8 hours worked.

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

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

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

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

28 31. For example, PLAINTIFF and other Aggrieved Employees were required to perform

1 off-the-clock work for which they were not compensated. For example, prior to beginning a
2 scheduled shift, PLAINTIFF and other Aggrieved Employees were required to start and/or boot all
3 of DEFENDANTS' computer systems, phone systems, and/or software so as to have all systems
4 running at the start of the scheduled shift. As such, PLAINTIFF typically spent at least five (5)
5 minutes before each scheduled shift preparing at least approximately several different work
6 applications in order to clock in and begin his shift. This pre-shift work was off-the-clock and
7 uncompensated resulting in unpaid minimum and overtime wages.

8 32. PLAINTIFF and other Aggrieved Employees were also pressured to complete at
9 least some of their work tasks off-the-clock in order to meet DEFENDANTS' goals and
10 expectations. For example, based on information and belief, PLAINTIFF and other Aggrieved
11 Employees consistently performed off-the-clock work in the form of completing DEFENDANTS'
12 required trainings and/or setting up and/or troubleshooting work computers and/or DEFENDANTS'
13 applications and/or operating system. Based on information and belief, DEFENDANTS have a
14 policy and practice of requiring Aggrieved Employees to consistently perform off-the-clock work
15 outside of their scheduled shift times, including but not limited to, off-the-clock work in connection
16 with setting up and/or troubleshooting work equipment and/or electronic systems, completing
17 DEFENDANTS' mandated trainings, among other work tasks completed off-the-clock that were
18 neither recorded nor compensated resulting in DEFENDANTS' failure to pay Aggrieved Employees
19 for all work time and the underpayment of minimum wages and overtime wages owed to Aggrieved
20 Employees.

21 33. Moreover, based on information and belief, at times, DEFENDANTS' electronic
22 employee time-keeping system/app malfunctioned such that Aggrieved Employees were required
23 to either reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or
24 were unable to clock in at all for the start of their shifts and/or clock back in from meal periods,
25 resulting in off-the-clock work and the underpayment of wages owed to Aggrieved Employees.
26 Based on information and belief, Aggrieved Employees experienced the same issues when clocking
27 out for shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was
28 not recorded and not compensated and resulted in unpaid minimum wages owed to Aggrieved

1 Employees.

2 34. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
3 also required to complete off-the-clock work outside of scheduled shift due to work-related phone
4 calls and/or messages they received to their phones and were required to respond to including but
5 not limited to communications from other Aggrieved Employees and/or supervisors and/or
6 DEFENDANTS' customers and/or clients, resulting in significant off-the-clock work and the
7 underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

8 35. Based on information and belief, Aggrieved Employees also regularly performed off-
9 the-clock work due to their need to perform pre-shift and/or post-shift work, such as but not limited
10 to, respond to work-related communications, review client files, and/or complete other work tasks
11 while off-the-clock, resulting in the underpayment of wages owed to Aggrieved Employees.

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

17 37. Moreover, based on information and belief, DEFENDANTS failed to pay Aggrieved
18 Employees split shift premium wages when they worked split shifts during the relevant period.

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

1 separately itemize these split shift premium wages on PLAINTIFF's and/or other Aggrieved
2 Employees' wage statements, in violation of Labor Code sections 510, 1194 and all applicable IWC
3 Wage Orders. See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the
4 premium payment on the pay stub provided to the employee, and it should be shown as a separate
5 category such as "Split Shift Premium" and should not be lumped into another category such as
6 wages, bonus, etc. DEFENDANTS failed to separately account for the split shift premiums earned
7 by PLAINTIFF and/or other Aggrieved Employees on their wage statements.

8 39. 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.

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

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

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

27 43. Based on information and belief, DEFENDANTS failed to incorporate all non-
28 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive

1 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
2 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
3 wages owed to PLAINTIFF and other Aggrieved Employees.

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

6 45. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
7 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
8 and/or implemented in accordance with the requirements of California law and/or DEFENDANTS
9 failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws,
10 including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor
11 Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an
12 AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

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

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

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

20 46. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to
21 comply with the above procedures, and thus, failed to properly institute an alternative workweek for
22 the purpose of obtaining a lawful exemption from overtime premiums for its mandated alternative
23 workweek schedule. Based on information and belief, DEFENDANTS also failed to report the
24 results to the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the
25 purported election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage
26 Orders. This conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the
27 Applicable Wage Orders. These violations subject employer to civil penalties under Labor Code §§
28 558 and 2699, and All Applicable Wage Orders. Each violation of each Labor Code section and

1 Wage Order provision results in a separate civil penalty, for each Aggrieved Employee, for each
2 pay period during which the referenced statutes and Wage Order provisions were violated.

3 47. Moreover, to the extent there was an AWS that was properly adopted,
4 DEFENDANTS violated California's overtime laws as to Aggrieved Employees that were subject
5 to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the
6 agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee
7 to work fewer hours than those that are regularly scheduled by the agreement, the employer shall
8 pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's
9 regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is
10 required to work the reduced hours." See Section 3 of all applicable Wage Orders. Based on
11 information and belief, at times, Aggrieved Employees that were subject to an AWS, were sent
12 home early and/or worked less hours than those that were scheduled under the AWS.
13 DEFENDANTS paid Aggrieved Employees their base rate for all hours worked on shortened shift(s)
14 during which Aggrieved Employees were sent home early and/or worked less hours than those that
15 were scheduled under the AWS in violation of the alternative workweek schedule, and in violation
16 of California Labor Code section 510, the applicable Wage Order, and Labor Code section 1198.
17 As such, Aggrieved Employees that were subject to an AWS were also deprived of all owed
18 overtime wages when required to work shortened shifts.

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

28 49. For example, based on information and belief, PLAINTIFF and other Aggrieved

1 Employees were forced to take late meal periods in order to complete assigned job duties. Based on
2 information and belief, PLAINTIFF and other Aggrieved Employees were at times, interrupted
3 during purported meal periods and/or had meal periods cut short and/or restricted to
4 DEFENDANTS' premises/the worksite due to the need to continue assigned job duties.

5 50. For example, PLAINTIFF was required to clock out for at least thirty minutes per
6 shift for a purportedly off-duty meal period but was frequently if not always interrupted during those
7 purportedly off-duty meal periods with work-related calls and/or messages from his supervisors
8 and/or other Aggrieved Employees. PLAINTIFF was not paid meal period premiums for these
9 missed, interrupted, shortened and/or on-duty meal periods.

10 51. Based on information and belief, DEFENDANTS have a policy and practice of
11 requiring Aggrieved Employees to clock out for meal periods but to continue working due to the
12 need to complete assigned job duties, resulting in off-the-clock work and the underpayment of
13 minimum wages and overtime wages owed to Aggrieved Employees. For example, as explained
14 above, Aggrieved Employees were required to monitor work communication devices and respond
15 to work-related communications during unpaid meal periods, resulting in DEFENDANTS' failure
16 to pay Aggrieved Employees for all work time and meal period law violations, among other
17 violations of the Labor Code described herein.

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

23 53. Based on information and belief, DEFENDANTS implemented policies and/or
24 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
25 during unpaid meal periods. For example, as explained above, Aggrieved Employees were required
26 to monitor work communication devices and respond to work-related communications during
27 unpaid meal periods, resulting in DEFENDANTS' failure to pay Aggrieved Employees for all work
28 time and meal period law violations, among other violations of the Labor Code described herein.

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

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

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

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

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

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

27 60. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
28 additional hour of wages at their respective regular rates of compensation for each workday a lawful

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

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

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

14 **63.** Based on information and belief, DEFENDANTS did not have a have a compliant
15 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
16 practice.

17 **64.** For example, based on information and belief, PLAINTIFF and other Aggrieved
18 Employees were at times unable to take compliant rest periods due to the need to complete assigned
19 job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had
20 purported rest periods restricted to the worksite premises. For example, PLAINTIFF was
21 frequently, if not always, required to work through part or all of both of his owed rest periods each
22 shift due to the need to respond to work-related communications and/or complete other work tasks.

23 **65.** Also, DEFENDANTS had no policy in place as to the timing of rest periods and only
24 permitted any rest periods to be taken as time permitted and/or once jobs were completed. For
25 example, DEFENDANTS frequently if not always failed to provide Aggrieved Employees with any
26 version of a second rest period and/or a legally compliant second rest period before the eighth hour
27 of work.

28 **66.** For example, as explained above, Aggrieved Employees were required to monitor

1 work communication devices and respond to work-related communications during purportedly off-
2 duty rest periods, and as such were not relieved of all duties and DEFENDANTS' control during
3 any rest periods, in violation of California rest period law.

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

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

10 69. Based on information and belief, DEFENDANTS implemented policies and/or
11 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
12 DEFENDANTS' control during rest periods. For example, as explained above, Aggrieved
13 Employees were required to monitor work communication devices and respond to work-related
14 communications during purportedly off-duty rest periods, and as such were not relieved of all duties
15 and DEFENDANTS' control during any rest periods, in violation of California rest period law.

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

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

26 72. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
27 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
28 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved

1 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
2 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
3 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
4 applicable hourly rates in effect during the pay period and the corresponding number of hours
5 worked at each hourly rate by the employee.

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

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

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

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

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

27 78. Based on further information and belief, DEFENDANTS issued wage statements to
28 Aggrieved Employees that failed to list the accurate total hours worked whenever shift differential

1 wages were paid in violation of Labor Code section 226.

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

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

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

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

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

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

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

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

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

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

5 88. Based on information and belief, DEFENDANTS shifted the costs of doing business
6 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
7 to, purchase and/or maintenance of uniforms/clothing/safety/protective equipment and/or personal
8 tools, use of Aggrieved Employees' personal vehicles and/or the use of Aggrieved Employees'
9 personal mobile phones and data usage for work-related purposes, including but not limited to,
10 receiving and responding to work related messages and/or phone calls.

11 89. For example, based on information and belief, at times, Aggrieved Employees
12 received calls/messages to their personal cell phones/mobile devices from supervisors/team leads
13 and/or other Aggrieved Employees regarding scheduling and/or other work tasks but were not
14 provided any and/or full reimbursement from DEFENDANTS for this business use of their personal
15 cell phones.

16 90. Based on information and belief, Aggrieved Employees were not reimbursed at all
17 and/or in full for the cost of using their personal phones, computers, printers, scanners and/or other
18 equipment and tools and/or devices Aggrieved Employees required to perform their assigned job
19 duties. For example, DEFENDANTS required PLAINTIFF to use his own computer, internet,
20 phone, among other work-related equipment, tools and/or devices in carrying out PLAINTIFF's
21 assigned job duties, however, DEFENDANTS did not provide full reimbursement for the expenses
22 PLAINTIFF incurred in connection therewith.

23 91. Based on information and belief, DEFENDANTS have a policy in practice of failing
24 to reimburse Aggrieved Employees for all expenses they incurred as a result of being required to
25 work remotely and/or from their homes. For example, as a result of working from home, Aggrieved
26 Employees were necessarily required to use their home internet, electricity, and/or other utilities in
27 the discharge of their duties, yet did not receive any and/or full reimbursement from DEFENDANTS
28 for these business expenses.

1 92. Based on information and belief, DEFENDANTS have a policy and practice of
2 failing to provide reimbursement/full reimbursement to Aggrieved Employees for all tools and/or
3 equipment Aggrieved Employees were required to purchase and/or maintain as a direct consequence
4 of carrying out their assigned job duties.

5 93. Based on information and belief, Aggrieved Employees were/are at times required
6 to use their personal vehicles for work purposes without receiving any reimbursement from
7 DEFENDANTS and /or full reimbursement from DEFENDANTS, including but not limited to,
8 reimbursement at the applicable legally mandated Internal Revenue Service (IRS) per mile
9 compensation rate. For example, based on information and belief, at times Aggrieved Employees
10 were required to drive between job sites and/or otherwise use their personal vehicles to carry out
11 their assigned job duties without receiving any and/or full reimbursement from DEFENDANTS for
12 the vehicle-related expenses incurred in connection therewith.

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

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

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

24 97. (A) Each workday an employee is required to report for work and does report, but is
25 not put to work or is furnished less than half said employee's usual or scheduled day's work, the
26 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
27 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less
28 than the minimum wage. (B) If an employee is required to report for work a second time in any one

1 workday and is furnished less than two (2) hours of work on the second reporting said employee
2 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
3 minimum wage.

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

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

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

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

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

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

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

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

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

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

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

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

7 **108. Failure to Pay Vested Vacation/Paid Time Off:** Based on information and belief,
8 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
9 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
10 failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation
11 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
12 limited to, shift differentials) to Aggrieved Employees upon separation of employment, in violation
13 of California law, including but not limited to, Labor Code section 227.3.

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

19 **110.** Upon separation of employment, Aggrieved Employees' final paychecks were not
20 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
21 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
22 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
23 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
24 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate
25 including non-discretionary compensation, including but not limited to, shift differentials).

26 **111.** For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck
27 for at least approximately several days following the termination of PLAINTIFF's employment, and
28 PLAINTIFF's late final paycheck was devoid of all wages owed, including but not limited to, all

1 owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or
2 paid time off wages at the properly accrued rates, (including but not limited to, all owed vacation
3 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
4 limited to, shift differentials).

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

13 113. **Violation of Labor Code section 976.** Labor Code section 976 provides that "No
14 person shall publish or cause to be published any advertisement, solicitation or communication in
15 any newspaper, poster, or letter, offering employment as a salesman, broker or agent whether as an
16 employee or independent contractor, which advertisement, solicitation or communication (a) is
17 willfully designed to mislead any person as to compensation or commissions which may be earned;
18 or (b) falsely represents the compensation or commissions which may be earned."

19 114. Based on information and belief, DEFENDANTS has a policy and/or practice of
20 offering prospective employees, including Aggrieved Employees, a higher compensation and
21 commission that is misleading as it falsely represents the compensation or commission that will be
22 earned during employment, as the actual compensation or commission earned is lower than that
23 which is offered to induce employment or continued employment. Such a practice or policy is in
24 violation of Labor Code section 976.

25 115. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

26 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

27 116. Based on information and belief, DEFENDANTS required Aggrieved Employees to
28 agree in writing to unlawful conditions of employment, including but not limited to unlawful non-

1 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements
2 (including but not limited to, in violation of Labor Code section 232), unlawful
3 commission/compensation agreements (including but not limited to, in violation of Labor Code
4 section 2751, agreements misclassifying non-exempt employees as exempt and/or as independent
5 contractors), unlawful releases and/or waivers (including but not limited to, unlawful meal period
6 waivers universally signed and/or devoid of right to revoke), unlawful forum selection clauses
7 and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a
8 condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

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

23 119. Based on information and belief, DEFENDANTS required Aggrieved Employees to
24 agree in writing to a background check which failed to abide by the requirements set forth in CA
25 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
26 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
27 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
28 the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,

1 failing to provide a way by which the individual could request a copy of the report, failing to disclose
2 the name, address, and telephone number of the third party preparing the report, and failing to
3 properly obtain authorization or consent to such a background check, and thus was an unlawful
4 background check.

5 120. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
6 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
7 section 432.5.

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

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

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

18 Unlawful Inquires into Criminal History

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

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

28 Unlawful PAGA Waiver

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

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

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

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

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

24
25 **FIRST CAUSE OF ACTION**
26 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
27 **2698, ET SEQ.**
28 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all Defendants)**

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

1 **Failure to Keep Accurate Records**

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

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

11 134. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
12 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
13 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
14 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
15 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
16 period during which the referenced statutes and Wage Order provisions were violated.²

17 **Meal Period Violations**

18 135. 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.

23 136. 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 ² 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 be provided before the end of the 10th hour of work. *Ibid.*

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

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

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

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

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

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

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

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

15 **Rest Period Violations**

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

1 applicable IWC Wage Order, §12(B).

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

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

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

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

25 150. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
26 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
27 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
28 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including

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

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

6 **Minimum and Overtime Wage Violations**

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

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

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

27 155. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
28 Aggrieved Employees for all hours worked.

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

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

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

18 159. DEFENDANTS also violated California's overtime laws as to those Aggrieved
19 Employees that were subject to an AWS but were required to work a shortened shift. Under
20 Section(B)(2) of all applicable IWC Wage Orders, "[i]f an employer, whose employees have
21 adopted an alternative workweek agreement permitted by this order requires an employee to work
22 fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the
23 employee overtime compensation at a rate of one and one-half times the employee's regular rate of
24 pay for all hours worked in excess of eight (8) hours, and double the employee's regular rate of pay
25 for all hours worked in excess of 12 hours for the day the employee is required to work the reduced
26 hours."

27 160. Based on information and belief, Aggrieved Employees that were subject to an AWS
28 worked shortened shifts on various diverse dates during the relevant period. On those shifts,

1 Aggrieved Employees subject to an AWS were entitled to overtime wages at 1.5 times their regular
2 rate of pay for all hours worked over eight hours in the shortened shift. Instead, DEFENDANTS
3 paid Aggrieved Employees at their base rate for all hours worked on the shortened shift, in violation
4 of California's overtime laws.

5 161. Based on further information and belief, DEFENDANTS required Aggrieved
6 Employees subject to an AWS to work more than eight (8) hours on days that were not scheduled
7 workdays without compensating those Aggrieved Employees at twice their regular rate(s) of pay for
8 the time worked beyond eight (8) hours on those days, in violation of California overtime laws,
9 including but not limited to, California Labor Code sections 510 and 511, the applicable Wage
10 Order, and Labor Code section 1198.

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

15 **Failure to Provide Written Commission Agreements.**

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

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

24 **Violation of Labor Code Section 226.2.**

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

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

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

14 **Statutory Wage Violations**

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

26 **Refusal to Make Payment**

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

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

7 **Standard Conditions of Labor Violations**

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

16 **Business Expense Violations**

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

23 171. Among other things, under California law, when employees must use their personal
24 cellphones for work-related purposes, the employer must reimburse them for a reasonable
25 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228

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

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

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

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

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

19 176. 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.

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

26 178. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
27 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
28 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor

1 Code § 2802 and the applicable Wage Order.

2 **Wage Statement Violations**

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

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

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

1 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

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

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

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

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

28 189. DEFENDANTS’ knowingly and intentionally failed to provide PLAINTIFF and

1 Aggrieved Employees with accurate, itemized wage statements.

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

11 191. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
12 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
13 during which the statute provisions were violated. ⁴

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

24 193. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
25 each pay period during which the statute provisions were violated. See Lab. Code §225.5
26 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
27 provided in this article, every person who unlawfully withholds wages due any employee in

28 ⁴ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
2 to pay each employee”).

3 194. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
4 provides as follows:

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

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

18 197. Based on information and belief, DEFENDANTS have a policy and practice of
19 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
20 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS’ failure to
21 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
22 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

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

27 199. Based on information and belief, DEFENDANTS have and continue to have a
28 uniform policy and practice of requiring Aggrieved Employees to work at least seven days

1 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
2 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
3 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
4 violation of California law, including but not limited to Labor Code Section 551.

5 **Sick Leave Violations**

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

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

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

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

26 204. Upon information and belief, DEFENDANTS failed and continue to fail to comply
27 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
28 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick

1 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
2 wages.

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

4 206. On information and belief, PLAINTIFF alleges that all of these practices were
5 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

24 210. Based on information and belief, DEFENDANTS had and continue to have a
25 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
26 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
27 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
28 discretionary compensation, including but not limited to, shift differentials) to Aggrieved

1 Employees upon separation of employment, in violation of California law, including but not limited
2 to, Labor Code section 227.3.

3 **Untimely Payment of Final Wages**

4 211. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
5 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
6 payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an
7 employee not having a written contract for a definite period quits his or her employment, his or her
8 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
9 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
10 to his or her wages at the time of quitting.”

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

17 213. Based on information and belief, DEFENDANTS failed and continue to fail to timely
18 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
19 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF
20 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not
21 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
22 sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all
23 owed vacation pay/paid time off paid at the final rate including non-discretionary compensation,
24 including but not limited to, shift differentials).

25 214. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
26 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
27 256.

28 **Violation of Labor Code Section 976**

1 215. Labor Code section 976 provides that “No person shall publish or cause to be
2 published any advertisement, solicitation or communication in any newspaper, poster, or letter,
3 offering employment as a salesman, broker or agent whether as an employee or independent
4 contractor, which advertisement, solicitation or communication (a) is willfully designed to mislead
5 any person as to compensation or commissions which may be earned; or (b) falsely represents the
6 compensation or commissions which may be earned.”

7 216. Based on information and belief, DEFENDANTS have a policy and/or practice of
8 offering prospective employees, including Aggrieved Employees, a higher compensation and
9 commission that is misleading as it falsely represents the compensation or commission that will be
10 earned during employment, as the actual compensation or commission earned is lower than that
11 which is offered to induce employment or continued employment. Such a practice or policy is in
12 violation of Labor Code section 976.

13 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

14 217. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
15 require any employee or applicant for employment to agree, in writing, to any term or condition
16 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
17 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
18 conditions of employment including but not limited to unlawful non-solicitation/non-compete
19 agreements, unlawful confidentiality and/or nondisclosure agreements (including but not limited to,
20 in violation of Labor Code section 232), unlawful commission/compensation agreements (including
21 but not limited to, in violation of Labor Code section 2751, agreements misclassifying non-exempt
22 employees as exempt and/or as independent contractors), unlawful releases and/or waivers
23 (including but not limited to, unlawful meal period waivers universally signed and/or devoid of right
24 to revoke), unlawful forum selection clauses and/or choice of law provisions/agreements and/or
25 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment
26 in violation of Labor Code section 432.5.

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

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

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

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

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

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

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

28 Unlawful Inquires into Criminal History

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

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

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

15 Unlawful PAGA Waiver

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

19 228. 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.”)

25 229. 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.”)

2 230. 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.

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

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

22 232. 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: July 31, 2023

CROSNER LEGAL, PC

By: 
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