

1 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
2 JAMIE SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
3 BRANDON BROUILLETTE, ESQ. (SBN 273156)
bbrouillette@crosnerlegal.com
4 **CROSNER LEGAL, PC**
9440 Santa Monica Blvd. Suite 301
5 Beverly Hills, CA 90210
6 Tel: (866) 276-7637
Fax: (310) 510-6429

7 Attorneys for Plaintiff DIEGO HERNANDEZ GOMEZ
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 SANTA CLARA**

12 DIEGO HERNANDEZ GOMEZ, on behalf
13 of the State of California, and others similarly
situated and aggrieved,

14 Plaintiff,

15 v.
16

17 VIDHWAN, INC., a California Corporation;
18 GBT US LLC, a Delaware Limited Liability
Company; GLOBAL BUSINESS TRAVEL
19 GROUP, INC., a Delaware Corporation; and
DOES 1-100, inclusive,

20 Defendants.
21
22
23
24
25
26
27
28

E-FILED
8/1/2023 5:17 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV420271
Reviewed By: N. Christopherson

Case No.: 23CV420271

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

1 Plaintiff, DIEGO HERNANDEZ GOMEZ (“PLAINTIFF”), an individual on behalf of
2 PLAINTIFF, the State of California, and all other Aggrieved Employees (as defined below), hereby
3 files this Complaint against Defendants VIDHWAN, INC., a California Corporation; GBT US LLC,
4 a Delaware Limited Liability Company; GLOBAL BUSINESS TRAVEL GROUP, INC., a
5 Delaware Corporation; and DOES 1-100, inclusive, (collectively referred to herein as
6 “DEFENDANTS”). PLAINTIFF is informed and 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 Santa Clara pursuant to
17 California Code of Civil Procedure section 395.5 because one or more of the DEFENDANTS
18 transact business within this judicial district and conduct alleged by PLAINTIFF herein occurred in
19 this this judicial district. *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60
20 Cal.App.5th 1069 (venue in a PAGA action is proper in any county where the defendants committed
21 Labor Code violations against some of its employees).

22 **THE PARTIES**

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

25 5. PLAINTIFF worked for DEFENDANTS as a travel agent, travel counselor, travel
26 advisor and/or similar title(s) and/or position(s) from in or around August 2022 through in or around
27 February 10, 2023. DEFENDANTS assigned PLAINTIFF to work remotely from PLAINTIFF’s
28 home in Hemet, California. PLAINTIFF’s job duties included, but were not limited to, providing

1 virtual travel and booking assistance for hotels and car rentals for DEFENDANTS' customers and/or
2 clients. PLAINTIFF regularly worked at least eight (8) to nine (9) hours per day, at least five (5)
3 days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
4 DEFENDANTS as hours worked. At all relevant times, PLAINTIFF was a non-exempt employee
5 that was misclassified by DEFENDANTS as an independent contractor.

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

9 7. DEFENDANTS own, operate, manage and/or staff its employees to work remotely
10 and/or at offices and/or other location(s) in California, including but not limited to offices and/or
11 other locations in Hemet, California. DEFENDANTS, through its various locations serve the
12 hospitality industry and/or provide staffing solutions for other companies.

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

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

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. Moreover, based on information and belief, VIDHWAN, INC., hired PLAINTIFF
4 and entered into a written agreement with PLAINTIFF to work for DEFENDANTS. Based on
5 information and belief, VIDHWAN, INC., maintained control over many aspects of PLAINTIFF's
6 work, including, among other things, having the authority to discipline PLAINTIFF, change
7 PLAINTIFF's job assignment, change PLAINTIFF's work hours, change PLAINTIFF's rates of pay,
8 and to terminate PLAINTIFF's services/employment.

9 16. Based on information and belief, when PLAINTIFF was first hired, VIDHWAN,
10 INC., provided PLAINTIFF with orientation and training materials and/or written policies and/or
11 handbooks. Based on information and belief, VIDHWAN, INC., exercised control over payment to
12 PLAINTIFF for work performed for DEFENDANTS. Based on information and belief,
13 VIDHWAN, INC., INC. directed PLAINTIFF to comply with GBT US LLC and GLOBAL
14 BUSINESS TRAVEL GROUP, INC.'s policies and directions. PLAINTIFF is informed and
15 believes that VIDHWAN, INC., exercised the same control over, applied the same policies and
16 practices, and engaged in the same acts and omissions with regard to the other Aggrieved
17 Employees.

18 17. GBT US LLC and GLOBAL BUSINESS TRAVEL GROUP, INC (hereinafter
19 collectively referred to as "GBT") similarly suffered or permitted PLAINTIFF to work for them or
20 engaged PLAINTIFF to work for them. PLAINTIFF is informed and believes that GBT entered into
21 a written agreement with VIDHWAN, INC., pursuant to which GBT paid VIDHWAN, INC., to
22 provide it with workers, including PLAINTIFF, to conduct GBT's business operation. GBT suffered
23 or permitted PLAINTIFF to work for GBT.

24 18. GBT further exercised control over PLAINTIFF's wages, hours and working
25 conditions. Based on information and belief, GBT: (1) set PLAINTIFF's work hours; (2) supervised
26 PLAINTIFF's work through its employees; (3) assigned PLAINTIFF's job duties and trained
27 PLAINTIFF on said job duties; (4) exercised authority to reprimand and counsel PLAINTIFF
28 regarding any work performance and other issues; and (5) exercised authority to end PLAINTIFF's

1 work assignment at any time, which essentially equated to a termination of employment as
2 PLAINTIFF was not guaranteed any other job assignments. On information and belief, GBT issued
3 further written policies and practices and guidelines governing PLAINTIFF's working conditions
4 with which PLAINTIFF was required to comply. PLAINTIFF is informed and believes that GBT
5 exercised the same control over, applied the same policies and practices, and engaged in the same
6 acts and omissions with regard to the other Aggrieved Employees.

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

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

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

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

24 **PAGA ALLEGATIONS**

25 23. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
26 of the State of California and all Aggrieved Employees, regarding violations of the California Labor
27 Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include the
28 following subcategories and are collectively referred to herein as "Aggrieved Employees":

1 (1) All individuals who currently or formerly worked directly for
2 VIDHWAN, INC., regardless of where those individuals were
3 assigned or staffed to work – in California at any time within one
year plus 65 days from the filing of the initial Complaint through
the present (“PAGA Period”).

4 (2) All individuals who currently or were formerly assigned/staffed
5 to work at GBT US LLC and/or GLOBAL BUSINESS TRAVEL
6 GROUP, INC., by VIDHWAN, INC., and/or any other
7 staffing/temporary service agencies in California at any time
within one year plus 65 days from the filing of the initial
Complaint through the present (“PAGA Period”).

8 (3) All individuals who currently or formerly worked directly for
9 GBT US LLC and/or Global Business Travel Group, Inc. in
10 California within one year one year plus 65 days from the filing
of the initial Complaint through the present (“PAGA Period”).

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

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

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

27 26. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
28 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved

1 Employees.

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

5 **FACTUAL ALLEGATIONS**

6 28. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
7 worked for DEFENDANTS in the State of California. At all times referenced herein,
8 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
9 permitted them to work.

10 29. PLAINTIFF worked for DEFENDANTS as a travel agent, travel counselor, travel
11 advisor and/or similar title(s) and/or position(s) from in or around August 2022 through in or around
12 February 10, 2023. DEFENDANTS assigned PLAINTIFF to work remotely from PLAINTIFF's
13 home in Hemet, California. PLAINTIFF's job duties included, but were not limited to, providing
14 virtual travel and booking assistance for hotels and car rentals for DEFENDANTS' customers and/or
15 clients. PLAINTIFF regularly worked at least eight (8) to nine (9) hours per day, at least five (5)
16 days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
17 DEFENDANTS as hours worked. At all relevant times, PLAINTIFF and other Aggrieved
18 Employees were non-exempt employees of DEFENDANTS. PLAINTIFF and some Aggrieved
19 Employees were misclassified by DEFENDANTS as independent contractors, but were actually
20 non-exempt employees under California law. Based in information and belief, some Aggrieved
21 Employees were correctly classified as non-exempt employees, but were still subjected to some of
22 the Labor Code violations alleged herein.

23 30. **Willful Misclassification as an Independent Contractor.** California Labor Code
24 section 226.8 makes it illegal to willfully misclassify an employee as an independent contractor,
25 providing: "[i]t is unlawful for any person or employer to engage in any of the following activities:
26 (1) Willful misclassification of an individual as an independent contractor. (2) Charging an
27 individual who has been willfully misclassified as an independent contractor a fee, or making any
28 deductions from compensation, for any purpose, including for goods, materials, space rental,

1 services, government licenses, repairs, equipment maintenance, or fines arising from the
2 individual's employment where any of the acts described in this paragraph would have violated the
3 law if the individual had not been misclassified." California Labor Code section 226.8 (a).

4 31. Throughout the relevant period, DEFENDANTS misclassified PLAINTIFF and
5 other Aggrieved Employees as independent contractors as opposed to employees to evade California
6 wage and hour laws. To qualify as an independent contractor under California law, (a) the worker
7 must be free from the employer's control and direction in the performance of the work, both under
8 the contract for the performance of the work and in fact; (b) the work performed must be outside the
9 usual course of the employer's business; and (c) the worker must not be customarily engaged in an
10 independently established trade, occupation, or business of the same nature as the work he
11 performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903;
12 Labor Code Section 2775. All three conditions must be met, or the worker has been misclassified.

13 32. Despite DEFENDANTS' efforts to evade California wage and hour laws by setting
14 up an alleged contractor scheme, the reality is that PLAINTIFF and other misclassified Aggrieved
15 Employees are and were, in fact, at all relevant times, employees according to the law, in that: (a)
16 PLAINTIFF and other Aggrieved Employees are/were not free from DEFENDANTS' control and
17 direction in the performance of work, both under the contract for the performance of the work and
18 in fact; (b) the work PLAINTIFF and other Aggrieved Employees perform/performed is/was
19 entirely within the usual course of the DEFENDANTS' business; and (3) PLAINTIFF and other
20 Aggrieved Employees are not/were not customarily engaged in an independently established trade,
21 occupation, or business of the same nature as the work they perform/performed for DEFENDANTS.

22 33. (a) PLAINTIFF and other misclassified Aggrieved Employees are/were not free from
23 DEFENDANTS' control and direction in the performance of work, both under the contract for the
24 performance of the work and in fact. DEFENDANTS control and direct PLAINTIFF's and other
25 Aggrieved Employees' work. First, DEFENDANTS decide PLAINTIFF's and other Aggrieved
26 Employees' schedule (including days and hours worked). Moreover, PLAINTIFF and other
27 Aggrieved Employees are not free to determine when to work, as DEFENDANTS require that
28 PLAINTIFF and other Aggrieved Employees request and obtain approval for time off. For example,

1 PLAINTIFF is required to request and obtain approval prior to taking time off. Moreover,
2 PLAINTIFF worked shifts as directed by DEFENDANTS, and DEFENDANTS set PLAINTIFF's
3 work schedule. Second, DEFENDANTS require that PLAINTIFF and other Aggrieved Employees
4 meet quotas and/or standards implemented by DEFENDANTS. Third, DEFENDANTS controls
5 and/or directs PLAINTIFF's and other Aggrieved Employees' workdays, including but not limited
6 to tasks that must be completed and the manner in which they must be completed. For example,
7 DEFENDANTS requires that PLAINTIFF and other Aggrieved Employees follow
8 DEFENDANTS' rules and meet DEFENDANTS' expectations including but not limited to the
9 following rules as outlined in policies DEFENDANTS distributes to Aggrieved Employees : be on
10 time to scheduled shifts, communicate delays to other team members, respond to communications
11 in a timely manner, and attend meetings during Aggrieved Employees ' scheduled shifts and/or other
12 meetings regularly scheduled by DEFENDANTS. DEFENDANTS also control the way other
13 Aggrieved Employees in various positions perform their work. For example, DEFENDANTS
14 instruct Aggrieved Employees in various positions as to which programs/software's to open in order
15 to begin their shifts, which dashboards to check, which portals to use, and daily responsibilities that
16 must be met and tasks that must be completed. Moreover, although DEFENDANTS do not have a
17 lawful meal and/or rest period policy and/or practice, DEFENDANTS instruct PLAINTIFF and
18 other Aggrieved Employees to take a meal and a rest period during their scheduled shift and requires
19 that they report any purported meal and/or rest period. As another example, DEFENDANTS control
20 and direct the workdays of Aggrieved Employees. For instance, DEFENDANTS require Aggrieved
21 Employees in a travel agent, travel counselor, travel advisor and/or other similar position(s) to clock
22 in at the start of a shift, clock out for lunch, clock back in after lunch, clock out at the end of the
23 shift, require that they follow certain directions for requesting time off/vacation, follow directions
24 regarding which software/application to use for particular requests, and require that certain tasks be
25 completed prior to completing a scheduled shift and/or after completing a scheduled shift, including
26 but not limited to responding to chats/communications, checking emails, and/or providing status
27 updates to supervisors. Likewise, PLAINTIFF was required to follow similar directions. For
28 example, PLAINTIFF was required to clock in and out for each shift, clock in and out for purported

1 meal periods, and was required to notify other team members and/or his supervisor if and when
2 PLAINTIFF steps away from his workstation for a purported rest period. Fourth, DEFENDANTS
3 control the manner in which PLAINTIFF and other Aggrieved Employees perform their work.
4 Additionally, based on information and belief, DEFENDANTS monitor Aggrieved Employees'
5 communications and activities, including but not limited to the quantity and/or quality of
6 communications and/or tours and/or activities sold and/or transactions completed. DEFENDANTS
7 grade/score Aggrieved Employees based on these factors as part of their quality control metrics and
8 base promotions and/or pay raises on these metrics. Similarly, DEFENDANTS track the number of
9 clients/customers and/or requests sent to Aggrieved Employees in a in order to monitor whether
10 customers/clients book a particular service, among other things. As a result, DEFENDANTS
11 controls and directs PLAINTIFF's and other Aggrieved Employees' work.

12 34. (b) The work PLAINTIFF and Aggrieved Employees perform/performed work
13 is/was entirely within the usual course of the DEFENDANTS' business of providing hospitality
14 services, among other services. DEFENDANTS is in the business of providing including but not
15 limited to hospitality and/or travel-related services, and PLAINTIFF and Aggrieved Employees
16 work/worked in various positions including but not limited to travel agents, travel counselors, travel
17 advisors and/or similar title(s) and/or position(s) in order to conduct DEFENDANTS' business. The
18 work that PLAINTIFF and the Aggrieved Employees perform/performed is/was therefore not a
19 distinct occupation or an incidental or tangential part of DEFENDANTS' operations, but rather
20 is/was central to DEFENDANTS' business.

21 35. (c) PLAINTIFF and the misclassified Aggrieved Employees are not/were not
22 customarily engaged in an independently established trade, occupation, or business of the same
23 nature as the work they perform/performed for DEFENDANTS. PLAINTIFF and the Aggrieved
24 Employees do not/did not incur profits or losses; instead, DEFENDANTS manage/managed the
25 business operation, attracts/attracted any investors and customers/clients, advertises/advertised to
26 potential customers/clients and secures/secured customers/clients. PLAINTIFF and the Aggrieved
27 Employees do not/have not made any capital investment in any of DEFENDANTS' facilities or
28 advertising or DEFENDANTS' mobile app/other electronic systems. PLAINTIFF and the

1 Aggrieved Employees do not/did not own an independent business enterprise, and do not/did not
2 maintain any separate business structures or facilities. PLAINTIFF and the Aggrieved Employees
3 do not/did not hire or subcontract other individuals to provide additional services to customers as
4 independent contractors in business for themselves would do. Instead, DEFENDANTS unilaterally
5 label PLAINTIFF and other Aggrieved Employees as independent contractors and requires them to
6 enter into contracts labeling them as such, when they in fact, are not independent contractors.

7 36. Based on the work relationship described above, there can be no doubt that
8 PLAINTIFF and other Aggrieved Employees were at all relevant times DEFENDANTS' employees
9 – not independent contractors. At all relevant times, PLAINTIFF and other Aggrieved Employees
10 were in fact, non-exempt employees of DEFENDANTS. Thus, DEFENDANTS' conduct
11 constitutes an intentional, willful pattern and/or practice of misclassification.

12 37. DEFENDANTS misclassified and continue to misclassify PLAINTIFF and other
13 Aggrieved Employees as independent contractors to try to evade California labor laws that protect
14 employees, such as but not limited to, minimum and overtime wage and sick pay laws, workers'
15 compensation laws, expense reimbursement requirements, record-keeping requirements, wage
16 statement requirements, and requirements as to the timely payment of wages during and upon
17 separation of employment.

18 38. As part of its misclassification scheme, DEFENDANTS have failed and continue to
19 fail to pay minimum and overtime wages, violated and continues to violate sick pay requirements,
20 failed and continues to fail to secure workers' compensation, failed and continues to fail to
21 reimburse business expenses, failed and continues to fail to keep accurate and complete payroll
22 records, failed and continues to fail to furnish timely, accurate itemized wage statements, failed and
23 continues to fail to timely pay all wages due and owing upon separation of employment, and failed
24 and continues to fail to pay all wages owed every pay period, among other labor code violations,
25 described in further detail below.

26 39. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
27 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
28 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved

1 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
2 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
3 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
4 below.

5 40. DEFENDANTS willfully misclassified PLAINTIFF and continues to willfully
6 misclassify some Aggrieved Employees as independent contractors to evade California's minimum
7 wage laws.

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

14 42. Based on information and belief, Aggrieved Employees were not paid for all hours
15 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
16 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
17 the clock work policies and/or practices. For example, PLAINTIFF and other Aggrieved Employees
18 were required to perform off-the-clock work for which they were not compensated. For example,
19 prior to beginning a scheduled shift, PLAINTIFF and other Aggrieved Employees were required to
20 start and/or boot all of DEFENDANTS' computer systems, phone systems, and/or software so as to
21 have all systems running at the start of the scheduled shift. As such, PLAINTIFF typically spent at
22 least ten (10) to fifteen (15) minutes before each scheduled shift preparing at least approximately
23 several different work applications in order to clock in and begin his shift. This pre-shift work was
24 off-the-clock and uncompensated resulting in unpaid minimum and overtime wages. PLAINTIFF
25 was also pressured to complete at least some of his work tasks off-the-clock in order to meet
26 DEFENDANTS' goals and expectations. For example, PLAINTIFF performed approximately at
27 least three (3) hours of off-the-clock work in the form of completing DEFENDANTS' required
28 trainings during PLAINTIFF's employment.

1 43. Also, PLAINTIFF was required to perform at least two (2) hours of off-the-clock
2 work on at least one or more than one occasion in the form of setting up and/or troubleshooting
3 PLAINTIFF's work computer and/or DEFENDANTS' operating system. Based on information and
4 belief, DEFENDANTS has a policy and practice of requiring Aggrieved Employees to consistently
5 perform off-the-clock work outside of their scheduled shift times, including but not limited to, off-
6 the-clock work in connection with setting up and/or troubleshooting DEFENDANTS' equipment
7 and/or electronic systems, completing DEFENDANTS' mandated trainings, among other work
8 tasks completed off-the-clock that were neither recorded nor compensated resulting in
9 DEFENDANTS' failure to pay Aggrieved Employees for all work time and the underpayment of
10 minimum wages and overtime wages owed to Aggrieved Employees .

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

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

26 46. Based on information and belief, Aggrieved Employees also regularly performed off-
27 the-clock work due to their need to perform pre-shift and/or post-shift work, respond to work-related
28 communications, review client files, and/or complete other work tasks while off-the-clock.

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

3 47. For example, based on information and belief, at times, DEFENDANTS required
4 Aggrieved Employees to work two separate shifts in the same day. Based on information and belief,
5 DEFENDANTS failed to pay Aggrieved Employees split shift compensation whenever
6 PLAINTIFF's and/or other Aggrieved Employees' work schedules were interrupted by non-paid
7 non-working periods established by DEFENDANTS, which resulted in a violation of the applicable
8 Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift,
9 one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that
10 workday...). See, also, Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one
11 (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday,
12 except when the employee resides at the place of employment). DEFENDANTS also failed to
13 separately itemize these split shift premium wages on PLAINTIFF's and/or other Aggrieved
14 Employees' wage statements, in violation of Labor Code sections 510, 1194 and all applicable IWC
15 Wage Orders. See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the
16 premium payment on the pay stub provided to the employee, and it should be shown as a separate
17 category such as "Split Shift Premium" and should not be lumped into another category such as
18 wages, bonus, etc. DEFENDANTS failed to separately account for the split shift premiums earned
19 by PLAINTIFF and/or other Aggrieved Employees on their wage statements.

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

25 49. Based in information and belief, DEFENDANTS implemented a time-rounding
26 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
27 compensable time because the time-rounding system implemented by DEFENDANTS would
28 almost always, if not always, result in understating actual compensable work time.

1 50. For example, DEFENDANTS' time records for PLAINTIFF evidence rounding of
2 PLAINTIFF's total hours worked to at least the nearest quarter, half and/or whole hour. For
3 example, DEFENDANTS' time records for PLAINTIFF reflect a precise shift start time of 7:00
4 and/or 7:30 for including but not limited to the following days: February 6, 2023, February 7, 2023,
5 February 8, 2023, February 9, 2023, and February 10, 2023. Based on information and belief,
6 DEFENDANTS rounded PLAINTIFF's total hours worked during most if not all shifts worked,
7 resulting in DEFENDANTS' failure to pay PLAINTIFF for all work time. DEFENDANTS' failure
8 to pay for all time worked by virtue of their time rounding, auto-deduction policies and practices for
9 unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work
10 practices and policies, resulted in the underpayment of minimum wages owed to PLAINTIFF and
11 Aggrieved Employees as well as unpaid overtime wages for those Aggrieved Employees who
12 worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

13 51. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
14 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
15 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
16 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
17 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
18 forty (40) hours in a week, including but not limited to, all recorded work time. For example, based
19 on information and belief, PLAINTIFF consistently worked more than eight (8) hours in a day
20 and/or more than forty hours in a workweek during the relevant period, yet DEFENDANTS failed
21 to pay PLAINTIFF any premium wage rate for time worked beyond eight (8) hours in a day and/or
22 for time worked beyond forty hours in a week, resulting in the underpayment of overtime wages
23 owed to PLAINTIFF.

24 52. Based on information and belief, DEFENDANTS willfully misclassified
25 PLAINTIFF and other Aggrieved Employees as independent contractors when they were at all
26 relevant times DEFENDANTS' employees and denied them owed overtime wages. Based on
27 information and belief, DEFENDANTS continue to willfully misclassify Aggrieved Employees as
28 independent contractors to evade California's overtime wage laws, resulting in the underpayment

1 of overtime wages owed to Aggrieved Employees, among other violations of the California Labor
2 Code described herein.

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

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

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

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

1 DEFENDANTS' premises/the worksite due to the need to continue assigned job duties. For
2 example, for including but not limited to, at least the approximately first four (4) months of
3 PLAINTIFF's employment, DEFENDANTS did not allow PLAINTIFF to take meal periods despite
4 PLAINTIFF almost always if not always working shifts lasting longer than five and one half hours
5 long and/or at least eight (8) hours long. Based on information and belief, DEFENDANTS did not
6 pay all owed meal period premiums for these missed and/or otherwise legally noncompliant meal
7 periods. For the remaining months of PLAINTIFF's employment, DEFENDANTS purported to
8 allow a single thirty-minute meal period per shift, however, PLAINTIFF was at times required to
9 cut his single meal period short, take an interrupted and/or late meal period and/or work through his
10 meal period completely due to the need to complete assigned job duties. Nevertheless,
11 DEFENDANTS performed an automatic meal period deduction of at least thirty minutes per shift
12 even though DEFENDANTS had actual and/or constructive knowledge that PLAINTIFF was
13 working through part or all of his owed meal periods and/or otherwise required to take noncompliant
14 meal periods, resulting in meal period law violations, the underpayment of wages owed to
15 PLAINTIFF, among other violations of the Labor Code described herein.

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

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

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

28 60. Based on information and belief, despite DEFENDANTS' failure to provide lawful

1 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
2 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
3 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
4 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
5 Employees did not receive lawful meal periods.

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

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

12 63. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
13 records of the true start and end times of PLAINTIFF's and Aggrieved Employees' meal periods.
14 Based on information and belief, to the extent meal periods were recorded, DEFENDANTS illegally
15 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other
16 Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal
17 periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58. For example, DEFENDANTS'
18 time records for PLAINTIFF reflect a clock out for a purported meal period of exactly thirty minutes
19 on including but not limited to the following dates: February 6, 2023, February 7, 2023, February
20 8, 2023, February 9, 2023, and February 10, 2023. Based on information and belief, all of
21 DEFENDANTS' time records for PLAINTIFF evidence DEFENDANTS automatically deducted at
22 least thirty minutes and/or rounded the start and end times of purported meal periods on most if not
23 all shifts PLAINTIFF worked even though PLAINTIFF was required to work through part or all of
24 his meal periods, resulting in shortened meal periods and unpaid wages.

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

1 65. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
2 additional hour of wages at their respective regular rates of compensation for each workday a lawful
3 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
4 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
5 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
6 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
7 compensation for purposes of calculating the owed meal period premium.

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

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

16 68. Based on information and belief, DEFENDANTS did not have a have a compliant
17 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
18 practice. For example, based on information and belief, PLAINTIFF was at times, unable to take
19 compliant rest periods due to PLAINTIFF's need to complete assigned job duties and/or was unable
20 to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted
21 to DEFENDANTS' premises/his workstation due to the need to continue completing assigned job
22 duties.

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

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

1 71. Based on information and belief, DEFENDANTS implemented policies and/or
2 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
3 DEFENDANTS' control during rest periods.

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

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

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

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

1 Labor Code section 226(a).

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

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

10 78. Based on information and belief, wage statements issued by DEFENDANTS failed
11 to list the inclusive dates of the pay period for which the Aggrieved Employee being paid.

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

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

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

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

27 83. **Failure to Produce Employment Records.** Based on information and belief,
28 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current

1 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
2 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF sent a
3 written request for payroll and personnel records to DEFENDANTS. Yet, DEFENDANTS failed to
4 timely produce complete records within the time periods delineated by California labor law. Based
5 on information and belief, DEFENDANTS failed and continues to fail to timely produce complete
6 payroll and personnel records when requested by other Aggrieved Employees. Based on information
7 and belief, DEFENDANTS failed and continue to fail to timely produce complete time, pay, and
8 personnel records when requested by other Aggrieved Employees.

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

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

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

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

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

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

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

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

27 **91.** Based on information and belief, DEFENDANTS shifted the costs of doing business
28 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on

1 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
2 including but not limited to including but not limited to, purchase and/or maintenance of
3 uniforms/clothing/safety/protective equipment and /or personal tools, use of Aggrieved Employees
4 ' personal vehicles and/or the use of Aggrieved Employees ' personal mobile phones and data usage
5 for work-related purposes, including but not limited to, receiving and responding to work related
6 messages and/or phone calls. For example, based on information and belief, at times, Aggrieved
7 Employees received calls/messages to their personal cell phones/mobile devices from
8 supervisors/team leads and/or other Aggrieved Employees regarding scheduling and/or other work
9 tasks but were not provided any and/or full reimbursement from DEFENDANTS for this business
10 use of their personal cell phones. Based on information and belief, Aggrieved Employees were
11 not reimbursed for the cost of using their personal phones for work-related purposes and/or the cost
12 of purchasing and/or maintaining work uniforms/clothing.

13 92. Based information and belief, DEFENDANTS have a policy in practice of failing to
14 reimburse PLAINTIFF and other Aggrieved Employees for all expenses they incurred as a result of
15 being required to work remotely and/or from their homes. For example, as explained above,
16 PLAINTIFF primarily worked remotely from PLAINTIFF's home. As a result of working from
17 home, PLAINTIFF and other Aggrieved Employees were necessarily required to use their home
18 internet, electricity, and other utilities in the discharge of their duties, yet did not receive any and/or
19 full reimbursement from DEFENDANTS for these business expenses. For instance, at times,
20 PLAINTIFF was required to work exclusively from his home but was not reimbursed by
21 DEFENDANTS at all for his internet or electricity costs.

22 93. Based on information and belief, DEFENDANTS have a policy and practice of
23 failing to provide reimbursement/full reimbursement to Aggrieved Employees for all tools and/or
24 equipment Aggrieved Employees were required to purchase and/or maintain as a direct consequence
25 of carrying out their assigned job duties. Based on information and belief, Aggrieved Employees
26 were/are at times required to use their personal vehicles for work purposes without receiving any
27 reimbursement from DEFENDANTS and /or full reimbursement from DEFENDANTS, including
28 but not limited to, reimbursement at the applicable legally mandated Internal Revenue Service (IRS)

1 per mile compensation rate. For example, based on information and belief, at times Aggrieved
2 Employees were required to drive between job sites and/or otherwise use their personal vehicles to
3 carry out their assigned job duties without receiving any and/or full reimbursement from
4 DEFENDANTS for the vehicle-related expenses incurred in connection therewith.

5 94. Based on information and belief, DEFENDANTS regularly failed to reimburse and
6 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
7 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
8 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
9 assigned by DEFENDANTS.

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

14 96. **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 97. 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 98. **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 99. 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.

13 100. 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.

19 101. 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.

24 102. 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.

28 103. **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 **104. 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 **105. 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 **106.** 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). For
26 example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck for at least
27 approximately seven (7) days following the separation 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).

5 107. 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.

13 108. **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."

19 109. Based on information and belief, DEFENDANTS have 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.

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

26 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

27 111. 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

1 independent contractor agreements, non-solicitation/non-compete agreements, unlawful
2 confidentiality and/or nondisclosure agreements, including but not limited to, unlawful requirements
3 to not disclose compensation, unlawful releases and/or waivers, unlawful forum selection clauses
4 and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a
5 condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

6 Unlawful Independent Contractor Agreements

7 112. Based on information and belief, DEFENDANTS have a policy and practice of
8 requiring Aggrieved Employees to agree, in writing, to terms and/or conditions DEFENDANTS
9 know are unlawful, including but not limited to, unlawful independent contractor agreements. For
10 example, DEFENDANTS have a policy and practice of requiring misclassified Aggrieved
11 Employees to sign unconscionable and/or otherwise unlawful agreements and/or provisions, such
12 as, but not limited to, agreements and/or provisions misclassifying Aggrieved Employees as
13 independent contractors. For example, DEFENDANTS required PLAINTIFF to sign
14 unconscionable and/or otherwise unlawful agreements and/or provisions such as but not limited to,
15 agreements and/or provisions that misclassified PLAINTIFF as an independent contractor, as a
16 condition of obtaining and/or maintaining employment, in violation of including but not limited to,
17 Labor Code section 432.5.

18 Unlawful Background Checks

19 113. Based on information and belief, DEFENDANTS ordered unlawful financial credit
20 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
21 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
22 employment, in violation of California and Federal law, which results in a further violation of Labor
23 Code section 432.5.

24 114. Based on information and belief, DEFENDANTS also required Aggrieved
25 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
26 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
27 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
28 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,

1 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
2 FCRA when conducting background screenings for applicants, including but not limited to
3 Aggrieved Employees that were subject to a background check as a condition of employment during
4 the application phase.

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

15 116. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
16 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
17 section 432.5.

18 117. Based on further information and belief, DEFENDANTS also required Aggrieved
19 Employees to agree in writing to provide ongoing consent to DEFENDANTS 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.

23 118. 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.

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

28 Unlawful Inquires into Criminal History

1 120. 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.

5 121. 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, and in violation of Labor code section 432.5.

10 Unlawful PAGA Waiver

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

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

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

25 125. Upon information and belief, DEFENDANTS required Aggrieved Employees to
26 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
27 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS
28 required written agreement to an unlawful provision as a condition of employment which is a

1 violation of labor code section 432.5.

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

6 127. **Failure to Secure Compensation in Violation of Labor Code section 3700 *et seq.*:**
7 DEFENDANTS did not secure workers' compensation for PLAINTIFF and other Aggrieved
8 Employees, in violation of California Labor Code section 3700, 3700.5, 3712, and 3715. Because
9 of DEFENDANTS' violations of those statutes, DEFENDANTS are liable for civil penalties in the
10 amounts specified in California Labor Code section 3700.5 and/or PAGA, for each Aggrieved
11 Employee.

12 **FIRST CAUSE OF ACTION**
13 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
14 **2698, *ET SEQ.***
15 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
16 **Defendants)**

17 128. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

18 **Willful Misclassification as an Independent Contractor**

19 129. California Labor Code section 226.8 makes it illegal to willfully misclassify an
20 employee as an independent contractor, providing: "[i]t is unlawful for any person or employer to
21 engage in any of the following activities: (1) Willful misclassification of an individual as an
22 independent contractor. (2) Charging an individual who has been willfully misclassified as an
23 independent contractor a fee, or making any deductions from compensation, for any purpose,
24 including for goods, materials, space rental, services, government licenses, repairs, equipment
25 maintenance, or fines arising from the individual's employment where any of the acts described in
26 this paragraph would have violated the law if the individual had not been misclassified." California
27 Labor Code section 226.8 (a).

28 130. As explained above, throughout the relevant period, DEFENDANTS misclassified
PLAINTIFF and other Aggrieved Employees as independent contractors as opposed to employees
in violation of Labor Code section 226.8. This misclassification scheme resulted in additional Labor

1 Code violations described herein.

2 ///

3 **Failure to Keep Accurate Records**

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

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

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

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

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

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

1 worked by the employee; all deductions; gross wages earned; and net wages earned.

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

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

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

24 **Meal Period Violations**

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

1 *Court* (2012) 53 Cal.4th 1004.

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

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

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

20 142. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
21 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
22 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
23 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
24 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
25 periods completely. PLAINTIFF and misclassified Aggrieved Employees were also denied all owed
26 meal periods due to DEFENDANTS’ unlawful misclassification scheme.

27 143. Based on information and belief, DEFENDANTS had and continue to have a policy
28 of rounding the start and end times of employees’ meal periods and/or automatically deducting thirty

1 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
2 Aggrieved Employees did not receive compliant meal periods.

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

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

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

14 147. These unlawful meal period policies and practices result in violations of Labor Code
15 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
16 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
17 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
18 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

19 **Rest Period Violations**

20 148. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
21 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
22 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
23 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
24 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
25 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
26 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
27 1029). The rest period requirement obligates employers to permit and authorize employees to take
28 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control

1 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
2 257. If the employer fails to provide any required rest period, the employer must pay the employee
3 one hour of pay at the employee's regular rate of compensation for each workday the employer did
4 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
5 applicable IWC Wage Order, §12(B).

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

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

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

27 152. PLAINTIFF and misclassified Aggrieved Employees were also denied all owed rest
28 periods due to DEFENDANTS' unlawful misclassification scheme.

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

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

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

12 **Minimum and Overtime Wage Violations**

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

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

26 158. As explained above, DEFENDANTS violated California's minimum and overtime
27 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
28 by virtue of, among other things, DEFENDANTS' misclassification scheme, time rounding policies

1 and practices (for shift start and end times and meal period start and end times), payment according
2 to scheduled hours worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work
3 completed during meal periods, and/or other otherwise off-the-clock work (described above), and/or
4 other unlawful policies and/or practices described above which resulted in unpaid minimum and
5 overtime wages.

6 159. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
7 Aggrieved Employees for all hours worked.

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

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

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

25 163. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
26 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
27 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
28 Wage Orders, section 20.

1 **Failure to Provide Written Commission Agreements**

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

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

10 **Violation of Labor Code Section 226.2**

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

22 167. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
23 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
24 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
25 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
26 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
27 226.2.

28 **Statutory Wage Violations**

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

12 **Refusal to Make Payment**

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

21 **Standard Conditions of Labor Violations**

22 170. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
23 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
24 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
25 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'

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

1 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
2 minimum/overtime wages and other violations described herein result in separate violations of
3 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
4 1197.1 and 2699.

5 **Business Expense Violations**

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

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

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

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

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

1 expenses in violation of Labor Code section 2802.

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

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

9 178. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
10 Employees have suffered injury in that they were not completely reimbursed as mandated by
11 California law.

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

16 **Wage Statement Violations**

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

26 181. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
27 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
28 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail

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

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

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

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

27 185. Separately, and independent from the above allegations, based on information and
28 belief, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees that

1 violate Labor Code section 226(a)(8), by failing to list the correct name and/or address of the legal
2 entity that is the employer.

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

5 187. DEFENDANTS' failure to accurately list all hours worked on all wage statements
6 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
7 Employees over whether they received all wages owed to them.

8 188. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
9 they could not easily determine whether they received all wages owed to them and whether they
10 were paid for all hours worked.

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

14 190. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
15 Aggrieved Employees with accurate, itemized wage statements.

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

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

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

1 **Unlawful Deductions**

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

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

18 **Reporting Time Pay Violations**

19 195. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

28 197. PLAINTIFF was not paid reporting time wages in accordance with California law,

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

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

11 **Violation of California Day of Rest Law**

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

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

22 **Sick Leave Violations**

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

1 compensation into the sick leave pay rate calculation.

2 202. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
3 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
4 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
5 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
6 Aggrieved Employees’ intelligent exercise of their paid sick leave.

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

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

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

20 206. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

21 207. On information and belief, PLAINTIFF alleges that all of these practices were
22 experienced and continue to be experienced by other Aggrieved Employees.

23 208. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
24 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
25 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

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

27 209. Labor Code § 248.2 provides that all employers with 26 or more employees are
28 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental

1 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
2 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
3 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
4 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
5 Labor Code section 248.6.

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

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

13 211. Based on information and belief, DEFENDANTS had and continue to have a
14 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
15 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
16 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
17 discretionary compensation, including but not limited to, shift differentials) to Aggrieved
18 Employees upon separation of employment, in violation of California law, including but not limited
19 to, Labor Code section 227.3.

20 **Untimely Payment of Final Wages**

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

28 213. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages

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

6 214. Based in information and belief, DEFENDANTS failed and continue to fail to timely
7 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
8 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF
9 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not
10 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
11 sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all
12 owed vacation pay/paid time off paid at the final rate including non-discretionary compensation,
13 including but not limited to, shift differentials). For example, DEFENDANTS failed to furnish
14 PLAINTIFF with any final paycheck for at least approximately seven (7) days following the
15 separation of PLAINTIFF's employment, and PLAINTIFF's late final paycheck was devoid of all
16 wages owed, including but not limited to, all owed minimum wages, overtime wages, premium
17 wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates,
18 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
19 discretionary compensation, including but not limited to, shift differentials).

20 215. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
21 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
22 256.

23 **Violation of Labor Code section 976**

24 216. Labor Code section 976 provides that "No person shall publish or cause to be
25 published any advertisement, solicitation or communication in any newspaper, poster, or letter,
26 offering employment as a salesman, broker or agent whether as an employee or independent
27 contractor, which advertisement, solicitation or communication (a) is willfully designed to mislead
28 any person as to compensation or commissions which may be earned; or (b) falsely represents the

1 compensation or commissions which may be earned.”

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

8 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

19 **Unlawful Independent Contractor Agreements**

20 219. Based on information and belief, DEFENDANTS have a policy and practice of
21 requiring Aggrieved Employees to agree, in writing, to terms and/or conditions DEFENDANTS
22 know are unlawful, including but not limited to, unlawful independent contractor agreements. For
23 example, DEFENDANTS have a policy and practice of requiring misclassified Aggrieved
24 Employees to sign unconscionable and/or otherwise unlawful agreements and/or provisions, such
25 as, but not limited to, agreements and/or provisions misclassifying Aggrieved Employees as
26 independent contractors. For example, DEFENDANTS required PLAINTIFF to sign
27 unconscionable and/or otherwise unlawful agreements and/or provisions such as but not limited to,
28 agreements and/or provisions that misclassified PLAINTIFF as an independent contractor, as a

1 condition of obtaining and/or maintaining employment, in violation of including but not limited to,
2 Labor Code section 432.5.

3 Unlawful Background Checks

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

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

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

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

28 224. Based on further information and belief, DEFENDANTS knew that requiring

1 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
2 condition of obtaining and/or holding employment was unlawful.

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

5 Unlawful Inquires into Criminal History

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

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

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

20 Unlawful PAGA Waiver

21 229. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring
22 PLAINTIFF and other Aggrieved Employees to agree in writing to other unlawful agreements,
23 including but not limited to, an unlawful waiver of PAGA and/or representative actions as a
24 condition of employment.

25 230. An action pursuant to PAGA “...is a representative action on behalf of the state”
26 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements
27 purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and
28 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384

1 (“We conclude that where, as here, an employment agreement compels the waiver of representative
2 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

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

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

13 **Failure to Secure Compensation in Violation of Labor Code section 3700 et seq.**

14 233. DEFENDANTS did not secure workers’ compensation for PLAINTIFF and other
15 misclassified Aggrieved Employees, in violation of California Labor Code section 3700, 3700.5,
16 3712, and 3715. Because of DEFENDANTS’ violations of those statutes, DEFENDANTS are liable
17 for civil penalties in the amounts specified in California Labor Code section 3700.5 and/or PAGA,
18 for each Aggrieved Employee.

19 234. Under the provisions of PAGA and the above mentioned Labor Code sections,
20 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.2,
21 226.7, 226.8, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 976, 1174, 1174.5, 1194,
22 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5, 3700, 3700.5, 3712, and 3715 and
23 all applicable Wage Orders as well as all interpretations of these laws by California Courts and
24 administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS
25 are liable for the following penalties:

- 26 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
27 relevant California Labor Code provisions listed herein only if permitted by the
28 PAGA statute, pursuant to Labor Code section 2699(a); and

- 1 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
2 violations without a civil penalty recoverable under the PAGA, all in the default
3 amounts provided by Labor Code section 2699(f).
- 4 c. The proper measure of penalties under PAGA is the number of violations,
5 whether those violations were committed as against PLAINTIFF or any
6 Aggrieved Employee, whether a party to this action or not.

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

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: August 1, 2023

CROSNER LEGAL, PC

By: 
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Brandon Brouillette, Esq.
Attorneys for Plaintiff
DIEGO HERNANDEZ GOMEZ