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9 Attorneys for Plaintiff BRANDEN HOWARD
10 on behalf of the State of California,
11 and others similarly situated and aggrieved

Assigned for All Purposes
Judge Peter Wilson
Dept. CX101

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ORANGE**

14 BRANDEN HOWARD, on behalf of the
15 State of California, and others similarly
16 situated and aggrieved,

17 Plaintiff,

18 v.

19 GRAPHIC PACKAGING
20 INTERNATIONAL, LLC, a Delaware
21 Limited Liability Company; and DOES 1-
22 100, inclusive,

23 Defendants.

Case No.: 30-2023-01343606-CU-OE-CXC

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

1 Plaintiff, BRANDEN HOWARD, (“PLAINTIFF”), an individual on behalf of PLAINTIFF,
2 the State of California, and all other Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants GRAPHIC PACKAGING INTERNATIONAL, LLC, a Delaware
4 Limited Liability Company; and DOES 1-100, inclusive, (collectively referred to herein as
5 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

21 **THE PARTIES**

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

24 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
25 DEFENDANTS as a non-exempt employee with a job title of machine operator, warehouse worker
26 or a similar title from in or around May 2022 through in or around December 5, 2022. PLAINTIFF
27 worked for DEFENDANTS at DEFENDANTS’ Visalia, California location(s).
28

1 6. Defendant GRAPHIC PACKAGING INTERNATIONAL, LLC is a Delaware
2 limited liability company that, at all relevant times, was authorized to do business within the State
3 of California and is doing business in the State of California.

4 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
5 plants, warehouses, conversion, processing and/or manufacturing facilities and/or other location(s)
6 in California, including but not limited to the plants, warehouses, conversion, processing and/or
7 manufacturing facilities in Visalia, California and Irvine, California. DEFENDANTS, through its
8 various other locations serves the manufacturing industry.

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

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

25 **JOINT LIABILITY**

26 10. Under California law, the definition of the terms “to employ” are broadly construed
27 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
28 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)

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

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

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

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

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

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

27 15. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
28 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS

1 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
2 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
3 PLAINTIFF seeks relief in this Complaint.

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

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

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

16 **PAGA ALLEGATIONS**

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

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

25 20. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
26 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
27 limitations period and suffered one or more of the Labor Code violations set forth herein.
28 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved

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

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

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

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

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

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

25 **FACTUAL ALLEGATIONS**

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

1 permitted them to work.

2 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFFS worked for
3 DEFENDANTS as a non-exempt employee with a job title of, machine operator, warehouse worker
4 or a similar title from in or around May 2022 through in or around December 5, 2022. PLAINTIFF
5 worked for DEFENDANTS at DEFENDANTS' Visalia, California location(s). PLAINTIFF
6 regularly worked at least eight (8) hours per day, at least five (5) days per week. DEFENDANTS
7 paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked.

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

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

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

23 30. Based on information and belief, Aggrieved Employees were not paid for all hours
24 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
25 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
26 the clock work policies and/or practices. For example, based on information and belief,
27 DEFENDANTS required Aggrieved Employees to be at their assigned workstations at the start of a
28 scheduled shift, thereby forcing Aggrieved Employees to gather work-related equipment and/or

1 safety gear prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in
2 pre-shift off-the-clock work. For example, based on information and belief, Aggrieved Employees
3 were required to compile tools, set up and/or clean their workstations prior to clocking in for the
4 start of his shift on most if not all shifts worked during the relevant period resulting in
5 DEFENDANTS' failure to pay Aggrieved Employees for all work time and the underpayment of
6 minimum wages and overtime wages owed to Aggrieved Employees. For example, PLAINTIFF
7 was frequently required to perform pre-shift and post-shift off-the-clock work. For example,
8 PLAINTIFF was required to set up and/or clean and/or organize his workstation prior to clocking
9 in for the start of his shift on most if not all shifts PLAINTIFF worked resulting in DEFENDANTS'
10 failure to pay PLAINTIFF for all work time and the underpayment of minimum wages and overtime
11 wages owed to PLAINTIFF.

12 31. Also, PLAINTIFF was required to perform post-shift off-the clock work. For
13 example, on most if not all days PLAINTIFF worked during the relevant period, DEFENDANTS
14 required PLAINTIFF to clock out for the end of his shift but to continue working due to the need to
15 clean and/or organize his work station and/or perform other work tasks off-the-clock, resulting in
16 the underpayment of minimum wages and overtime wages owed to PLAINTIFF. Based on
17 information and belief, DEFENDANTS required Aggrieved Employees to undergo security
18 screenings before and/or after a scheduled shift and/or before or after clocking in/out for work,
19 resulting in pre-shift and/or post-shift off-the-clock work. Based on information and belief, at times,
20 Aggrieved Employees were required to wait in line behind other Aggrieved Employees to access
21 DEFENDANTS' time-keeping system and/or terminal so they could then clock in for the start of
22 their shifts which said waiting time spent under DEFENDANTS' control that was neither recorded
23 nor compensated, in violation of California's minimum wage laws, overtime wage laws, among
24 other violations of the Labor Code described herein.

25 32. Based on information and belief, DEFENDANTS required Aggrieved Employees to
26 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
27 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.
28 Based on information and belief, Aggrieved Employees were required to complete other off-the-

1 clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal
2 periods, resulting in off-the-clock work and the underpayment of minimum and overtime wages
3 owed to Aggrieved Employees.

4 33. For example, based on information and belief, on most if not all days during the
5 relevant period, DEFENDANTS required Aggrieved Employees to clock out for the end of their
6 shifts but to continue working due to the need to return/maintain tools, clean and/or organize their
7 work stations/areas, provide shift status updates and/or debriefings and/or participate in work
8 meetings, respond to work-related communications and/or perform other work tasks off-the-clock,
9 resulting in the underpayment of minimum wages and overtime wages owed to Aggrieved
10 Employees.

11 34. Based on information and belief, DEFENDANTS did not compensate Aggrieved
12 Employees for time spent donning and doffing personal protective equipment, safety equipment
13 and/or uniforms (e.g., safety goggles/glasses and/or face masks) during meal periods, rest periods,
14 before the start of a scheduled shift, and after completing a scheduled shift.

15 35. Additionally, PLAINTIFF and other Aggrieved Employees were required to perform
16 other off-the-clock work for which they were not compensated. For example, based on information
17 and belief, at times, DEFENDANTS' electronic employee time-keeping system/app malfunctioned
18 such that Aggrieved Employees were required to either reinitiate and/or otherwise troubleshoot the
19 system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts
20 and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of
21 wages owed to Aggrieved Employees.

22 36. Based on information and belief, Aggrieved Employees experienced the same issues
23 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
24 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
25 Aggrieved Employees.

26 37. Moreover, based on information and belief, DEFENDANTS failed to pay Aggrieved
27 Employees split shift premium wages when they worked split shifts during the relevant period. For
28 example, based on information and belief, at times, DEFENDANTS required Aggrieved Employees

1 to work two separate shifts in the same day. Based on information and belief, DEFENDANTS failed
2 to pay Aggrieved Employees split shift compensation whenever PLAINTIFF's and/or other
3 Aggrieved Employees' work schedules were interrupted by non-paid non-working periods
4 established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See
5 section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay
6 at the minimum wage shall be paid in addition to the minimum wage for that workday...). See, also,
7 Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the
8 minimum wage shall be paid in addition to the minimum wage for that workday, except when the
9 employee resides at the place of employment).

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

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

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

27 41. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
28 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal

1 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
2 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
3 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
4 forty (40) hours in a week.

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

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

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

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

1 Aggrieved Employees were consistently interrupted during purported meal periods and/or had meal
2 periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned
3 job duties. For example, PLAINTIFF was restricted to the work premises during any purported
4 meal periods, and as such was not relieved of all duties and DEFENDANTS' control during unpaid
5 meal periods, resulting in meal period law violations and unpaid wages, among other violations of
6 the Labor Code described herein.

7 46. Also, PLAINTIFF was frequently forced to take interrupted and/or shortened meal
8 periods and/or work through part or all of his owed meal periods due to the need to complete
9 assigned job duties. Based on information and belief, DEFENDANTS performed an automatic meal
10 period deduction of at least thirty minutes per shift per Aggrieved Employee even though
11 DEFENDANTS had actual and/or constructive knowledge that Aggrieved Employees were at times
12 required to take shortened and/or interrupted meal periods and/or skip their meal periods completely
13 due to lack of coverage, the need to keep up with production deadlines, respond to work-related
14 communications and/or complete other work tasks.

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

20 48. Based on information and belief, DEFENDANTS implemented policies and/or
21 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
22 during unpaid meal periods. For example, as explained above, Aggrieved Employees were required
23 to remain tethered to the work premises during unpaid meal periods and as such were not relieved
24 of all duties and DEFENDANTS' control during unpaid meal periods, resulting in meal period law
25 violations, unpaid wages, record-keeping violations, wage statement violations, among other
26 violations of the Labor Code described herein.

27 49. Based on information and belief, DEFENDANTS required Aggrieved Employees to
28 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take

1 into account when scheduling meal periods for Aggrieved Employees. Based on information and
2 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

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

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

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

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

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

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

1 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
2 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
3 compensation for purposes of calculating the owed meal period premium.

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

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

12 **58.** Based on information and belief, DEFENDANTS did not have a have a compliant
13 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
14 practice. For example, based on information and belief, at times, Aggrieved Employees were unable
15 to take legally compliant rest periods due to lack of coverage, the need to keep up with production
16 deadlines/complete their assigned job duties and/or were unable to take a net ten-minute rest period
17 in a suitable rest area and/or had their purported rest periods restricted to DEFENDANTS' premises.
18 For example, per DEFENDANTS' unlawful rest period policies and practices, PLAINTIFF was
19 restricted to the work premises during any purported rest periods, and as such was not relieved of
20 all duties and DEFENDANTS' control during purportedly off-duty rest periods, in violation of
21 California rest period law. Also, PLAINTIFF was frequently forced to take interrupted and/or
22 shortened rest periods and/or work through part or all of his owed rest periods due to the need to
23 complete assigned job duties.

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

28 **60.** Moreover, based on information and belief, DEFENDANTS failed to provide any

1 form of a third rest period on shifts lasting longer than ten hours.

2 61. Based on information and belief, DEFENDANTS implemented policies and/or
3 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
4 DEFENDANTS' control during rest periods. For example, as explained above, Aggrieved
5 Employees were required to remain tethered to the work premises during any rest periods and as
6 such were not relieved of all duties and DEFENDANTS' control during any rest periods, in violation
7 of California rest period law.

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

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

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

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

1 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
2 vehicles.

3 66. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities
4 during their hours of work, particularly during meal and/or rest periods.

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

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

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

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

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

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

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

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

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

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

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

23 77. **Temperature Violations.** All Applicable IWC Wage Orders, Section 15: Section
24 15 of all applicable IWC Wage Orders, including but not limited to Wage Order No. 1, states as
25 follows:

26 78. (A) The temperature maintained in each work area shall provide reasonable comfort
27 consistent with industry-wide standards for the nature of the process and the work performed.

28 79. (B) If excessive heat or humidity is created by the work process, the employer shall

1 take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable
2 comfort. Where the nature of the employment requires a temperature of less than 60° F, a heated
3 room shall be provided to which employees may retire for warmth, and such room shall be
4 maintained at not less than 68°.

5 80. (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting
6 rooms, and change rooms during hours of use.

7 81. (D) Federal and State energy guidelines shall prevail over any conflicting provision
8 of this section.

9 82. Based on information and belief, on various diverse dates during the PAGA Period,
10 PLAINTIFF and/or other Aggrieved Employees were subjected to excessive heat and/or humidity
11 resulting in temperatures exceeding 100° F and/or to excessive cold temperatures during colder
12 times of the year, including temperatures of less than 68° in including but not limited to, the toilet
13 rooms, resting rooms, and or change rooms during hours of use.

14 83. Based on information and belief, on various diverse dates during the PAGA Period,
15 DEFENDANTS failed to provide PLAINTIFF and Aggrieved Employees with reasonable comfort
16 by maintaining the indoor temperature within the range of industry standards by providing adequate
17 air conditioning and/or heat and or proper ventilation. For example, based on information and belief,
18 temperatures in DEFENDANTS' manufacturing and/or processing facilities where PLAINTIFF and
19 other Aggrieved Employees worked were excessively cold in the winter and/or excessively hot,
20 including but not limited to, in the summer due to, including but not limited to, DEFENDANTS'
21 practice of failing to provide adequate artificial air conditioning and/or heating and/ or proper
22 ventilation and/or fans within the work facilities and/or other methods/means necessary to provide
23 reasonable comfort consistent with industry-wide standards for the nature of the process and the
24 work PLAINTIFF and other Aggrieved Employees were required to performed. PLAINTIFF is
25 informed and believes and thereon alleges that on various diverse dates during the PAGA period,
26 DEFENDANTS also failed to maintain the temperature in toilet rooms, resting rooms, and change
27 rooms during hours of use to no less than 68°.

28 84. As such, DEFENDANTS failed to maintain temperatures in each work area that

1 provide reasonable comfort consistent with industry-wide standards for the nature of the process
2 and the work performed, in violation of Section 15 of the IWC Wage Orders and the California
3 Labor Code, including but not limited to section 1198.

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

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

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

24 88. Based on information and belief, DEFENDANTS shifted the costs of doing business
25 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
26 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
27 including but not limited to, uniforms/work clothing/work shoes/personal protective/safety gear and
28 the use of Aggrieved Employees personal cell phones/mobile devices, internet and/or data usage for

1 work related purposes, including but not limited to, to receive and respond to work related messages
2 and/or phone calls. For example, based on information and belief, Aggrieved Employees were
3 required to receive and respond to work-related calls and/or messages from supervisors and/or other
4 Aggrieved Employees regarding scheduling and/or other work tasks but were not reimbursed by
5 DEFENDANTS at all and/or in full for these business expenses.

6 89. Based on information and belief, DEFENDANTS failed to reimburse Aggrieved
7 Employees for expenses associated with having to purchase and/or maintain their own hand tools
8 and/or equipment required to perform their assigned job duties.

9 90. Based on information and belief, Aggrieved Employees were not reimbursed for the
10 cost of purchasing and/or maintaining work uniforms/clothing/shoes and/or protective gear (e.g.,
11 gloves and/or face masks). Based on information and belief, at times, Aggrieved Employees were
12 not reimbursed for the business use of their personal vehicles, including mileage, wear and tear
13 and/or cost of fuel when they were required to drive around and/or between job sites, and/or
14 otherwise use their personal vehicles in carrying out the duties assigned by DEFENDANTS. As
15 such, DEFENDANTS failed to compensate Aggrieved Employees at the legally mandated Internal
16 Revenue Service (IRS) per mile compensation rates in effect during the relevant period. As
17 explained above, based on information and belief, Aggrieved Employees were not reimbursed for
18 the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or
19 maintaining work uniforms/work clothing/work shoes, personal protective/safety gear

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

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

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

5 94. Based on information and belief, DEFENDANTS have and continue to have a
6 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
7 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
8 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
9 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
10 violation of California law, including but not limited to Labor Code Section 551.

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

21 96. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
22 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
23 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
24 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
25 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
26 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
27 used sick leave and the balance of paid sick leave.

28 97. Based on information and belief, throughout the relevant time period,

1 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
2 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
3 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
4 prior to their respective separations, for as on several occasions thereafter, he or she would have
5 been entitled to use the banked sick leave and earn appropriate compensation.

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

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

15 100. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
16 that all employers with 26 or more employees are required to provide up to 80 hours for covered
17 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
18 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
19 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
20 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
21 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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

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

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

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

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

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

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

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

1 108. Upon separation of employment, Aggrieved Employees' final paychecks were not
2 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
3 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
4 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
5 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
6 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate
7 including non-discretionary compensation, including but not limited to, shift differentials).

8 109. For example, DEFENDANTS did not furnish PLAINTIFF with any final paycheck
9 until at least approximately one week following the termination of PLAINTIFF's employment, and
10 PLAINTIFF's late final paycheck was devoid of all wages owed, including without limitation, all
11 owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or
12 paid time off wages at the properly accrued rates, (including but not limited to, all owed vacation
13 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
14 limited to, shift differentials).

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

23 **111. Unlawful Agreements-Unlawful Criminal History Inquiries.**

24 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

25 112. Based on information and belief, DEFENDANTS required Aggrieved Employees to
26 agree in writing to unlawful conditions of employment including but not limited to unlawful non-
27 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements,
28 unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law

1 provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining
2 and/or continuing employment in violation of Labor Code section 432.5.

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

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

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

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

1 section 432.5.

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

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

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

12 Unlawful Inquires into Criminal History

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

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

22 Unlawful PAGA Waiver

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

26 123. An action pursuant to PAGA “...is a representative action on behalf of the state”
27 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements
28 purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and

1 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384
2 (“We conclude that where, as here, an employment agreement compels the waiver of representative
3 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

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

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

14 126. **Failure to Provide a Safe and Healthful Workplace.** During the PAGA Period,
15 DEFENDANTS failed to provide a safe and healthful workplace. Moreover, based on information
16 and belief, DEFENDANTS have had a policy and practice of failing, within one business day after
17 DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to
18 COVID-19, to notify PLAINTIFF and other Aggrieved Employees who were on the premises at the
19 same worksite as the qualifying individual within the infectious period, and the employers of
20 subcontracted employees who were on the premises at the same worksite as the qualifying individual
21 within the infectious period and the exclusive representative, if any, of the cleaning and disinfection
22 plan that the employer is implementing per the guidelines of the COVID 10 prevention program per
23 the Cal-OSHA COVID-19 Emergency Temporary Standards, among other things in violation of
24 Labor Code sections 6409.6 and/or 6432.

25 127. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
26 engaged in these same herein described unlawful practices, which led to violations of the California
27 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
28 unlawful practices to all of its employees that it applied to PLAINTIFF.

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

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

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

Failure to Keep Accurate Records

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

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

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

Meal Period Violations

132. California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and

¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil 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 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
2 *Court* (2012) 53 Cal.4th 1004.

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

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

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

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

27 137. 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.

3 138. 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.

5 139. 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.

9 140. 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.

14 141. 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**

20 142. 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).

6 143. 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.").

16 144. 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.

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

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

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

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

10 **Failure to Provide Suitable Resting Facilities**

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

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

24 151. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities
25 during their hours of work, particularly during meal and/or rest periods.

26 152. DEFENDANTS’ failure to provide suitable resting facilities to Aggrieved
27 Employees violated and continue to violate the applicable Wage Order, section 13(B) and the
28 California Labor Code, including but not limited to section 1198.

1 **Minimum and Overtime Wage Violations**

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

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

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

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

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

1 Employees.

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

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

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

17 **Temperature Violations**

18 161. All Applicable IWC Wage Orders, Section 15: Section 15 of all applicable IWC
19 Wage Orders, including but not limited to Wage Order No. 1, states as follows:

20 162. (A) The temperature maintained in each work area shall provide reasonable comfort
21 consistent with industry-wide standards for the nature of the process and the work performed.

22 163. (B) If excessive heat or humidity is created by the work process, the employer shall
23 take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable
24 comfort. Where the nature of the employment requires a temperature of less than 60° F, a heated
25 room shall be provided to which employees may retire for warmth, and such room shall be
26 maintained at not less than 68°.

27 164. (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting
28 rooms, and change rooms during hours of use.

1 165. (D) Federal and State energy guidelines shall prevail over any conflicting provision
2 of this section.

3 166. Based on information and belief, on various diverse dates during the PAGA Period,
4 PLAINTIFF and/or other Aggrieved Employees were subjected to excessive heat and/or humidity
5 resulting in temperatures exceeding 100° F and/or to excessive cold temperatures during colder
6 times of the year, including temperatures of less than 68° in including but not limited to, the toilet
7 rooms, resting rooms, and or change rooms during hours of use.

8 167. Based on information and belief, on various diverse dates during the PAGA Period,
9 DEFENDANTS failed to provide PLAINTIFF and Aggrieved Employees with reasonable comfort
10 by maintaining the indoor temperature within the range of industry standards by providing adequate
11 air conditioning and/or heat and or proper ventilation. For example, based on information and belief,
12 temperatures in DEFENDANTS' manufacturing and/or processing facilities where PLAINTIFF and
13 other Aggrieved Employees worked were excessively cold in the winter and/or excessively hot,
14 including but not limited to, in the summer due to, including but not limited to, DEFENDANTS'
15 practice of failing to provide adequate artificial air conditioning and/or heating and/ or proper
16 ventilation and/or fans within the work facilities and/or other methods/means necessary to provide
17 reasonable comfort consistent with industry-wide standards for the nature of the process and the
18 work PLAINTIFF and other Aggrieved Employees were required to performed. PLAINTIFF is
19 informed and believes and thereon alleges that on various diverse dates during the PAGA period,
20 DEFENDANTS also failed to maintain the temperature in toilet rooms, resting rooms, and change
21 rooms during hours of use to no less than 68°.

22 168. As such, DEFENDANTS failed to maintain temperatures in each work area that
23 provide reasonable comfort consistent with industry-wide standards for the nature of the process
24 and the work performed, in violation of Section 15 of the IWC Wage Orders and the California
25 Labor Code, including but not limited to section 1198.

26 **Statutory Wage Violations**

27 169. California Labor Code section 223 makes it unlawful for an employer to secretly pay
28 wages lower than required by statute while purporting to pay legal wages. As described above,

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

10 **Refusal to Make Payment**

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

19 **Standard Conditions of Labor Violations**

20 171. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
21 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
22 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
23 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
24 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
25 minimum/overtime wages and other violations described herein result in separate violations of
26

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

1 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
2 1197.1 and 2699.

3 **Business Expense Violations**

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

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

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

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

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

28 177. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved

1 Employees have suffered injury in that they were not completely reimbursed as mandated by
2 California law.

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

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

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

14 **Wage Statement Violations**

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

24 182. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
25 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
26 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
27 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
28 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net

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

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

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

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

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

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

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

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

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

12 191. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
13 Aggrieved Employees with accurate, itemized wage statements.

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

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

26 **Unlawful Deductions**

27 194. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from

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

1 an employee any part of wages theretofore paid by said employer to said employee.” Based on
2 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
3 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
4 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
5 Section 2699.

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

12 **Reporting Time Pay Violations**

13 196. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

27 199. Based on information and belief, DEFENDANTS have a policy and practice of
28 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,

1 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
2 pay all reporting time wages to PLAINTIFF and Aggrieved Employees violated and continues to
3 violate the applicable Wage Order, and the California Labor Code, including but not limited to
4 section 1198.

5 **Violation of California Day of Rest Law**

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

10 201. Based on information and belief, DEFENDANTS have and continue to have a
11 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
12 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
13 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
14 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
15 violation of California law, including but not limited to Labor Code Section 551.

16 **Seating Violations**

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

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

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

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

27 204. Suitable seating is one of the worker protections covered by California's Wage
28 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly

1 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
2 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

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

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

19 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **Untimely Payment of Final Wages**

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

25 220. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
26 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
27 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
28 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code

1 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also,
2 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

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

9 222. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
10 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
11 256.

12 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

22 224. The California Labor Code places certain procedural and substantive limits on an
23 employers’ ability to conduct employee background checks and on how employers can use the
24 information they obtain through those background checks. Labor Code section 1024.5 states that
25 employers, except for financial institutions, may order a credit check only if the individual works
26 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
27 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
28 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15

1 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
2 background check, including but not limited to identifying an appropriate reason for the background
3 check, a separate consent form with required disclosures and certain formatting requirements,
4 additional forms such as a summary of rights, a way by which to request a copy of the report, as
5 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

18 228. Based on further information and belief, DEFENDANTS knew that requiring
19 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
20 condition of obtaining and/or holding employment was unlawful.

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

23 Unlawful Inquires into Criminal History

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

28 231. Upon information and belief, DEFENDANTS, in violation of California law,

1 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
2 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
3 employment and/or otherwise impermissibly inquired into criminal history on its employment
4 application in violation of California law.

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

10 Unlawful PAGA Waiver

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

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

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

26 236. Upon information and belief, DEFENDANTS required some Aggrieved Employees
27 to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
28 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS

1 required written agreement to an unlawful provision as a condition of employment which is a
2 violation of labor code section 432.5.

3 **Failure to Provide a Safe and Healthful Workplace.**

4 237. Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the
5 California Occupational Safety and Health Act ("Cal OSHA"), employers must maintain a safe and
6 healthful place of employment. Specifically, Labor Code section 6400, requires the following:

7 238. (a) Every employer shall furnish employment and a place of employment that is safe
8 and healthful for the employees therein...

9 239. Labor Code section 6401 provides as follows:

10 240. Every employer shall furnish and use safety devices and safeguards, and shall adopt
11 and use practices, means, methods, operations, and processes which are reasonably adequate to
12 render such employment and place of employment safe and healthful. Every employer shall do every
13 other thing reasonably necessary to protect the life, safety, and health of employees.

14 241. Labor Code section 6402 prohibits the following:

15 242. No employer shall require, or permit any employee to go or be in any employment
16 or place of employment which is not safe and healthful.

17 243. Similarly, Labor Code section 6404 provides as follows:

18 244. No employer shall occupy or maintain any place of employment that is not safe and
19 healthful.

20 245. In addition to the above, Labor Code section 6403 requires that employees provide
21 safety devices to its employees. Labor Code section 6403 states:

22 246. No employer shall fail or neglect to do any of the following:

23 247. (a) To provide and use safety devices and safeguards reasonably adequate to render
24 the employment and place of employment safe.

25 248. (b) To adopt and use methods and processes reasonably adequate to render the
26 employment and place of employment safe.

27 249. (c) To do every other thing reasonably necessary to protect the life, safety, and health
28 of employees.

1 250. Similarly, Labor Code section 6406(d) states the following:

2 251. No person shall do any of the following ... (d) Fail or neglect to do every other thing
3 reasonably necessary to protect the life, safety, and health of employees.

4 252. Finally, Labor Code section 6407 provides:

5 253. Every employer and every employee shall comply with occupational safety and
6 health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations,
7 and orders pursuant to this division which are applicable to his own actions and conduct.

8 254. Moreover, Labor Code section 6409.6 sets forth the actions an employer (or
9 representative of employer) must take within one business day of receiving notice of potential
10 exposure to COVID-19, including but not limited to employee-notice and reporting requirements.

11 255. At all relevant times, DEFENDANTS employed PLAINTIFF and Aggrieved
12 Employees subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times,
13 DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and
14 safeguards and of failing to adopt and use practices, means, methods, operations, and/or processes
15 which are reasonably adequate to render such employment and place of employment safe and
16 healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times
17 DEFENDANTS had and have a policy and practice of requiring or permitting employees to go or
18 be in in any employment or place of employment which is not safe and healthful, pursuant to Labor
19 Code section 6402. At all relevant times, DEFENDANTS had and have a policy and practice of
20 failing or neglecting to: provide and use safety devices and/or provide reasonable access to
21 sanitation facilities (e.g., toilet facilities) and/or otherwise comply with sanitation standards and
22 safeguards reasonably adequate to render the employment and place of employment safe; adopt and
23 use methods and processes reasonably adequate to render the employment and place of employment
24 safe; and do every other thing reasonably necessary to protect the life, safety, and health of
25 employees, pursuant to Labor Code section 6403.

26 256. PLAINTIFF is informed and believes and thereon alleges that these failures include,
27 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or
28 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to

1 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
2 conditions between PLAINTIFF and/or other Aggrieved Employees.

3 257. At all relevant times, DEFENDANTS had a policy and practice of failing to give
4 sufficient, adequate and proper notice to PLAINTIFF and/or other Aggrieved Employees of the
5 COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace
6 exposure from a qualifying individual as required by Labor Code section 6409.6. PLAINTIFF is
7 informed and believes that numerous employees contracted COVID-19 during the relevant time
8 periods, but that DEFENDANTS failed to provide notice to employees. Based on further
9 information and belief, DEFENDANTS do not or did not keep adequate records of written
10 notifications required in subdivision (a) for a period of at least three years.

11 258. At all relevant times, DEFENDANTS had and have a policy and practice of failing
12 within one business day after DEFENDANTS or a representative of DEFENDANTS received notice
13 of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other Aggrieved
14 Employees and/or their exclusive representatives, who were on the premises at the same worksite
15 as a qualifying individual who was within the infectious period that they may have been exposed to
16 COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and
17 practice of failing within one business day after DEFENDANTS or a representative of EMLOYER
18 received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other Aggrieved
19 Employees who were on the premises at the same worksite as the qualifying individual within the
20 infectious period and the exclusive representative, if any, with information regarding COVID-19-
21 related benefits to which the employee may be entitled under applicable federal, state or local laws,
22 including but not limited to, workers' compensation, and options for exposed employees, including
23 COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or
24 negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the
25 employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and
26 6432.

27 259. At all relevant times, DEFENDANTS had and have a policy and practice of failing
28 within one business day after DEFENDANTS or a representative of DEFENDANTS received a

1 notice of potential exposure to COVID-19 to notify PLAINTIFF and other Aggrieved Employees
2 who were on the premises at the same worksite as the qualifying individual within the infectious
3 period, and the employers of the subcontracted employees who were on the premises at the same
4 worksite as the qualifying individual within the infectious period and the exclusive representative,
5 if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of
6 the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per
7 the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated,
8 without limitation, Labor Code sections 6409.6 and 6432.

9 260. At all relevant times, DEFENDANTS had and have a policy and practice of failing
10 to notify the local public health agency in the jurisdiction of the worksite of the names, number,
11 occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as
12 defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed
13 health care provider; a COVID-19 related order to isolate provided by a public health official; or
14 died due to COVID-19, in the determination of a county public health department or per inclusion
15 in the COVID-19 statistics of a county. As such, DEFENDANTS violated, without limitation,
16 Labor Code sections 6409.6 and 6432.

17 261. PLAINTIFF is informed and believes, and based thereon alleges that
18 DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and
19 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule
20 for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
21 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
22 blowers; and a sufficient number of toilets to be used by each of sex of employee.

23 262. Based on further information and belief, to the extent sanitation facilities were
24 provided/made accessible at all to PLAINTIFF, other Aggrieved Employees, DEFENDANTS failed
25 to maintain facilities that complied with California law, including without limitation, Labor Code
26 Section 2350 and California Code of Regulations, title 8, sections 3364, 3365 and 3366.

27 263. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS
28 violated the Labor Code sections described herein, including without limitation, for failure to:

1 furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to
2 employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other
3 Aggrieved Employees, who were on the premises at the same worksite as a qualifying individual
4 who was within the infectious period that they may have been exposed to COVID-19 pursuant to
5 California and local laws.

6 264. Based on information and belief, DEFENDANTS failed to protect Aggrieved
7 Employees from exposure to COVID-19 due to, including but not limited to, failing to
8 maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address
9 hazards related to the COVID-19 virus.

10 265. As such, DEFENDANTS failed to comply with the occupational safety and health
11 standards, failed to do everything reasonably necessary to protect the health and safety of
12 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
13 necessary to maintain a safe and healthful workplace.

14 266. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
15 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
16 is subject to civil penalties.

17 267. Under the provisions of PAGA and the above mentioned Labor Code sections,
18 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
19 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
20 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, 6432 and all applicable
21 Wage Orders as well as all interpretations of these laws by California Courts and administrative
22 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
23 the following penalties:

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

27 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
28 violations without a civil penalty recoverable under the PAGA, all in the default

amounts provided by Labor Code section 2699(f).

c. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against PLAINTIFF or any Aggrieved Employee, whether a party to this action or not.

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

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PRAYER FOR RELIEF

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

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

Dated: August 21, 2023

CROSNER LEGAL, PC

By: 
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Brandon Brouillette, Esq.
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BRANDEN HOWARD