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10 on behalf of the State of California,
11 and others similarly situated and aggrieved

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**

14 ARTURO SALAS GARCIA, on behalf of the
15 State of California, and others similarly
16 situated and aggrieved,

17 Plaintiff,

18 v.

19 STAY GREEN INC., a California
20 Corporation; and DOES 1-100, inclusive,

21 Defendants.

Case No.: **23STCV17296**

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

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

7 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
26 DEFENDANTS as a non-exempt employee with a job title of gardener or a similar title from in or
27 around May 15, 2018 through in or around December 2, 2022. PLAINTIFF worked for
28 DEFENDANTS at DEFENDANTS' Santa Clarita location and was assigned by DEFENDANTS to

1 work in cities throughout California, including but not limited to, Santa Clarita, California.

2 6. Defendant STAY GREEN INC., is a California Corporation that, at all relevant
3 times, was authorized to do business within the State of California and is doing business in the State
4 of California.

5 7. DEFENDANTS own, operate, manage and/or staff its employees to work at various
6 locations and/or facilities, including without limitation, public, commercial and/or residential spaces
7 and/or communities. DEFENDANTS own, operate and/or otherwise manage multiple locations
8 and/or facilities in California, in including but not limited to, the following neighborhoods and/or
9 cities: Rancho Palos Verdes, Santa Ana, Sun Valley, Bakersfield, Avalon, Santa Clarita, Castaic,
10 Anaheim, Oxnard, Canyon Country, Santa Fe Springs, and Moreno Valley. DEFENDANTS,
11 through its various locations serve the commercial landscaping industry.¹

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

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

28 ¹ See <https://www.staygreen.com/about-us/>. Last visited on May 19, 2023.

1 controlled, aided and abetted the conduct of all other Defendants.

2 **JOINT LIABILITY**

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

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

27 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
28 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized

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

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

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

1 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
2 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
3 collectively would evaluate their wage rates.

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

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

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

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

21 **PAGA ALLEGATIONS**

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

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

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

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

13 21. PLAINTIFF, on May 19, 2023, through counsel, gave written notice by online filing
14 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
15 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
16 in this Complaint (“PAGA Notice”).

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

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

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

1
2 **FACTUAL ALLEGATIONS**

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

7 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFFS worked for
8 DEFENDANTS as a non-exempt employee with a job title of, gardener or a similar title from in or
9 around May 15, 2018 through in or around December 2, 2022. PLAINTIFF worked for
10 DEFENDANTS at DEFENDANTS' Santa Clarita location and was assigned by DEFENDANTS to
11 work in cities throughout California, including but not limited to, Santa Clarita, California.
12 PLAINTIFF regularly worked at least eight (8) and/or ten (10) hours per day.

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

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

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

28 30. Based on information and belief, Aggrieved Employees were not paid for all hours

1 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
2 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
3 the clock work policies and/or practices. For example, as explained above, DEFENDANTS recorded
4 and reported for payroll purposes a meal period of precisely thirty-minutes per shift during most if
5 not all shifts PLAINTIFF worked during the relevant period even though DEFENDANTS had actual
6 and/or constructive knowledge PLAINTIFF was at times forced to work through his meal periods,
7 take on-duty meal period and/or take less than a thirty-minute meal period. For example, based on
8 information and belief, DEFENDANTS provided no mechanism for PLAINTIFF and other
9 Aggrieved Employees to record their shift start and end times. Instead, based on information and
10 belief, DEFENDANTS recorded and reported for payroll purposes PLAINTIFF and other
11 Aggrieved Employees scheduled hours worked rather than actual time worked and/or rounded the
12 total hours worked of PLAINTIFF and other Aggrieved Employees and/o otherwise forewent
13 recording all work time, resulting in the failure to pay PLAINTIFF and other Aggrieved Employees
14 or all work time, and the underpayment of minimum wages and overtime wages owed to
15 PLAINTIFF and other Aggrieved Employees.

16 31. Based on information and belief, Aggrieved Employees were required to be at their
17 job sites/respective workstations at their scheduled shift start time or face discipline. As such,
18 Aggrieved Employees typically arrived at work at least five (5) minutes prior to their scheduled shift
19 start times each day so that they could perform any required pre-shift work, including but not limited
20 to, bestowing their personal items in the employee storage area, retrieving/compiling their work
21 tools/equipment, making any necessary adjustments to their tools/equipment and/or perform any
22 required maintenance tasks, don work clothing/their uniforms and protective equipment (gloves,
23 goggles/glasses, reflective vests, safety shields/respirator masks/face masks, hard hats/saw caps,
24 earplugs/ear muffs and/or respirators), and/or complete other work tasks so as to be ready to be at
25 their respective work stations at their scheduled shift start times as mandated by DEFENDANTS.
26 This pre-shift off-the-clock work was neither recorded nor compensated resulting in the substantial
27 underpayment of wages owed to PLAINTIFF and other Aggrieved Employees.

28 32. Based on information and belief, PLAINTIFF and other Aggrieved Employees were

1 also required to perform post-shift off-the-clock work that was neither recorded nor compensated.
2 For example, based on information and belief, Aggrieved Employees put away their work
3 tools/equipment and/or changed out of their work clothing/uniform and/or protective gear after the
4 end time of their scheduled shifts and/or outside of their scheduled shift times. Based on
5 information and belief, PLAINTIFF and other Aggrieved Employees were required to perform
6 additional off-the-clock work for which they were not compensated. For example, based on
7 information and belief, DEFENDANTS did not compensate PLAINTIFF and other Aggrieved
8 Employees for time spent donning and doffing personal protective equipment, safety equipment
9 and/or uniforms/work clothing (e.g., gloves, goggles/glasses, safety shields/respirator masks/face
10 masks, reflective vests, hard hats/saw caps, earplugs/ear muffs and/or respirators) during meal
11 periods, rest periods, before the start of a scheduled shift, and/or after completing a scheduled shift.

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

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

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

27 36. Based on information and belief, DEFENDANTS had actual and/or constructive
28 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to

1 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
2 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation
3 of California's minimum and overtime wage laws.

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

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

13 39. Additionally, DEFENDANTS also violated California's overtime laws as to those
14 Aggrieved Employees, including PLAINTIFF that were subject to an Alternative Workweek
15 Schedule (AWS).

16 40. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
17 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
18 and/or implemented in accordance with the requirements of California law and/or DEFENDANTS
19 failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws,
20 including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor
21 Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an
22 AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

23 41. (C) Election Procedures Election procedures for the adoption
24 and repeal of alternative workweek schedules require the following:
25 (1) Each proposal for an alternative workweek schedule shall be in
26 the form of a written agreement proposed by the employer. The
27 proposed agreement must designate a regularly scheduled alternative
28 workweek in which the specified number of workdays and work hours

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

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

1 document. The report shall include the final tally of the vote, the size
2 of the unit, and the nature of the business of the employer. (7)
3 Employees affected by a change in the work hours resulting from the
4 adoption of an alternative workweek schedule may not be required to
5 work those new work hours for at least 30 days after the
6 announcement of the final results of the election. (8) Employers shall
7 not intimidate or coerce employees to vote either in support of or in
8 opposition to a proposed alternative workweek.

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

16 43. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to
17 comply with the above procedures, and thus, failed to properly institute an alternative workweek for
18 the purpose of obtaining a lawful exemption from overtime premiums for its mandated 10-hour/4-
19 day schedule. Based on information and belief, DEFENDANTS also failed to report the results to
20 the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the purported
21 election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This
22 conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage
23 Orders. These violations subject employer to civil penalties under Labor Code §§ 558 and 2699,
24 and All Applicable Wage Orders. Each violation of each Labor Code section and Wage Order
25 provision results in a separate civil penalty, for each Aggrieved Employee, for each pay period
26 during which the referenced statutes and Wage Order provisions were violated.

27 44. Moreover, to the extent there was an AWS that was properly adopted,
28 DEFENDANTS violated California's overtime laws as to Aggrieved Employees that were subject

1 to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the
2 agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee
3 to work fewer hours than those that are regularly scheduled by the agreement, the employer shall
4 pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's
5 regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is
6 required to work the reduced hours." See Section 3 of all applicable Wage Orders. Based on
7 information and belief, at times during PLAINTIFF's employment by DEFENDANTS',
8 PLAINTIFF worked subject to an alternative work week schedule in which PLAINTIFF worked
9 ten (10) hours per shift, four (4) shifts per week. Based on information and belief, at times,
10 PLAINTIFF and/or other Aggrieved Employees that were subject to an AWS, were sent home early
11 and/or worked less hours than those that were scheduled under the AWS. On such shortened shifts,
12 Aggrieved Employees were entitled to overtime pay at 1.5 times the regular rate of pay after the
13 first eight hours of work. Instead, DEFENDANTS paid Aggrieved Employees their base rate for all
14 hours worked on the shortened shift(s) in violation of the alternative workweek schedule, and in
15 violation of California Labor Code section 510, the applicable Wage Order, and Labor Code section
16 1198. As such, PLAINTIFF and other Aggrieved Employees that were subject to an AWS were also
17 deprived of all owed overtime wages when required to work shortened shifts.

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

1 periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned
2 job duties.

3 46. Also, based on information and belief, DEFENDANTS did not provide any
4 mechanism for PLAINTIFF to record the start and end times of any meal periods. Instead,
5 DEFENDANTS would record the purported start and end times of any meal periods. Based on
6 information and belief, DEFENDANTS automatically deducted at least thirty minutes per shift on
7 most if not all shifts PLAINTIFF worked during the relevant period even during shifts when
8 PLAINTIFF was required to work through his meal period, take an interrupted and/or on-duty meal
9 period and/or took a meal period that was not a full thirty minutes in length during which he was
10 relieved of all duties and DEFENDANTS' control. Based on information and belief,
11 DEFENDANTS also automatically deducted at least thirty minutes per shift for other Aggrieved
12 Employees for meal periods that were worked through, interrupted, and/or during which those
13 Aggrieved Employees were not relieved of all duties and DEFENDANTS' control for a full thirty
14 minutes. Based on further information and belief, DEFENDANTS rounded the start and end times
15 of PLAINTIFF's and other Aggrieved Employees' meal periods resulting in shortened meal periods
16 as well as unpaid wages.

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

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

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

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

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

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

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

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

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

1 compensation for purposes of calculating the owed meal period premium.

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

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

10 58. Based on information and belief, DEFENDANTS did not have a have a compliant
11 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
12 practice. For example, based on information and belief, Aggrieved Employees were at times, unable
13 to take compliant rest periods due to their need to complete assigned job duties and/or were unable
14 to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted
15 to DEFENDANTS' premises.

16 59. For example, PLAINTIFF was rarely if ever afforded a legally compliant rest period
17 during the relevant period due to his need to complete assigned job duties/meet project completion
18 deadlines and/or was unable to take a net ten-minute rest period in a suitable rest area and/or had
19 purported rest periods restricted to the job site.

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

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

26 62. Based on information and belief, DEFENDANTS implemented policies and/or
27 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
28 DEFENDANTS' control during rest periods.

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

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

11 65. **Cooldown Recovery Period Violations.** California Code of Regulations, Title 8,
12 section 3395 mandates that all employers with “outdoor places of employment” implement a heat
13 illness prevention program that includes, among other requirements, providing workers “cool-
14 down” periods of at least five minutes in the shade. Specifically, section 3395 provides that
15 “employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of
16 no less than five minutes at a time when they feel the need to do so to protect themselves from
17 overheating” and that “such access to shade shall be permitted at all times.” Under California Labor
18 Code section 226.7, if an employer fails to provide an employee a recovery period, the employer
19 shall pay the employee one additional hour of pay at the employee’s regular rate of compensation
20 for each workday that the meal or rest or recovery period is not provided.

21 66. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
22 required to spend multiple hours at a time outdoors in significantly high temperature heat conditions.
23 DEFENDANTS failed to provide proper heat illness prevention training and/or heat illness
24 policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8
25 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
26 California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
27 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
28 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to

1 shade for extended periods of time. In addition, DEFENDANTS, failed to pay PLAINTIFF and
2 other Aggrieved Employees with an additional hour of pay at PLAINTIFF's regular rate of pay for
3 each missed cooldown recovery period.

4 67. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC
5 Wage Orders, including but not limited to Wage Order 4, employees shall be provided with suitable
6 resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be
7 provided in an area separate from the toilet rooms and shall be available to employees during work
8 hours."

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

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

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

23 71. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
24 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
25 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
26 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
27 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
28 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all

1 applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate by the employee.

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

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

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

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

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

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

27 78. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved
28 Employees that were not accurate and did not include all of the statutorily required information. As

1 such, DEFENDANTS violated Labor Code section 226.

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

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

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

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

1 supposed to be the responsibility of the employer.

2 83. Based on information and belief, DEFENDANTS shifted the costs of doing business
3 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
4 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
5 including but not limited to including but not limited to, personal mobile phones, cost of internet
6 and/or data usage for work related purposes, including but not limited to, to receive and respond to
7 work related messages and/or phone calls. For example, based on information and belief, Aggrieved
8 Employees were required to receive and respond to work-related calls (e.g., regarding scheduling
9 and/or other work tasks) on their personal cell phones/mobile devices without being provided any
10 and/or full reimbursement from DEFENDANTS for these business expenses.

11 84. Based on information, Aggrieved Employees were required to purchase and/or
12 maintain their own uniforms, work clothing/work shoes and/or safety/protective gear, such as, but
13 not limited to, work shoes, gloves, and work equipment including but not limited to hand tools (e.g.,
14 scissors, razors, ratchets, blades and/or knives), ear plugs/ear muffs and/or face masks which
15 DEFENDANTS required, yet Aggrieved Employees were not reimbursed by DEFENDANTS for
16 the business expenses they incurred in connection therewith.

17 85. Based on information and belief, at times, DEFENDANTS failed to reimburse
18 Aggrieved Employees for expenses associated with having to purchase and/or maintain their own
19 hand tools and/or equipment required to perform their assigned job duties. Based on information
20 and belief, at times, Aggrieved Employees were not reimbursed for the business use of their personal
21 vehicles, including mileage, wear and tear, and cost of fuel when they were required to drive around
22 and/or between job sites, and/or use their personal vehicles in carrying out the duties assigned by
23 DEFENDANTS. As such, DEFENDANTS failed to compensate Aggrieved Employees at the
24 legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the
25 relevant period.

26 86. Based on information and belief, DEFENDANTS regularly failed to reimburse and
27 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
28 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable

1 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
2 assigned by DEFENDANTS.

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

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

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

24 90. Based on information and belief, throughout the relevant time period,
25 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
26 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
27 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
28 prior to their respective separations, for as on several occasions thereafter, he or she would have

1 been entitled to use the banked sick leave and earn appropriate compensation.

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

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

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

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

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

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

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

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

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

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

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

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

25 101. Upon separation of employment, Aggrieved Employees' final paychecks were not
26 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
27 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
28 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,

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

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

12 103. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

13 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

1 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
2 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
3 FCRA when conducting background screenings for applicants, including but not limited to
4 Aggrieved Employees that were subject to a background check as a condition of employment during
5 the application phase.

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

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

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

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

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

1 Unlawful Inquires into Criminal History

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

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

11 Unlawful PAGA Waiver

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

15 115. 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.”)

21 116. 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.’”)

26 117. 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.

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

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

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

23 120. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

24 **Failure to Keep Accurate Records**

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

29 122. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
30 and complete records as required by law, including but not limited to the following records: total

1 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
2 Aggrieved Employees began and ended each work period, time records of meal periods, and
3 accurate itemized wage statements.

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

10 **Meal Period Violations**

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

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

19 126. Employers covered by any and all applicable IWC Wage Orders have an obligation
20 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
21 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
22 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
23 ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
24 section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a

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

1 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
2 provided”).

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

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

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

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

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

26 132. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
27 periods in violation of California law and/or failed to pay the proper meal period premium for failure
28 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift

1 differential pay and/or other non-discretionary compensation into the regular rate or compensation
2 for purposes of calculating the owed meal period premium.

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

8 **Rest Period Violations**

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

23 135. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
24 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
25 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
26 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
27 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
28 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what

1 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
2 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
3 “onus is on the employer to clearly communicate the authorization and permission [to take rest
4 periods] to its employees.”).

5 136. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
6 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
7 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
8 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
9 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
10 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

27 **Cooldown Recovery Period Violations**

28 141. California Code of Regulations, Title 8, section 3395 mandates that all employers

1 with “outdoor places of employment” implement a heat illness prevention program that includes,
2 among other requirements, providing workers “cool-down” periods of at least five minutes in the
3 shade. Specifically, section 3395 provides that “employees shall be allowed and encouraged to take
4 a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the
5 need to do so to protect themselves from overheating” and that “such access to shade shall be
6 permitted at all times.” Under California Labor Code section 226.7, if an employer fails to provide
7 an employee a recovery period, the employer shall pay the employee one additional hour of pay at
8 the employee’s regular rate of compensation for each workday that the meal or rest or recovery
9 period is not provided.

10 142. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
11 required to spend multiple hours at a time outdoors in significantly high temperature heat conditions.
12 DEFENDANTS failed to provide proper heat illness prevention training and/or heat illness
13 policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8
14 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
15 California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
16 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
17 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
18 shade for extended periods of time. In addition, DEFENDANTS, failed to pay PLAINTIFF and
19 other Aggrieved Employees with an additional hour of pay at PLAINTIFF’s regular rate of pay for
20 each missed cooldown recovery period.

21 **Failure to Provide Suitable Resting Facilities**

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

26 144. DEFENDANTS’ locations/facilities are generally similar in layout and design, and
27 there was, and continues to be, space that allows for a resting facility that employees may use to
28 cease work and recover during meal or rest periods. DEFENDANTS could have provided

1 PLAINTIFF and Aggrieved Employees with a resting facility within DEFENDANTS'
2 facilities/locations with reasonable or no modification, but instead denied and continues to deny,
3 employees with suitable areas to rest (e.g. a breakroom). As a result, PLAINTIFF and other
4 Aggrieved Employees were forced to adjust to areas not conducive to resting, including but not
5 limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises
6 which are not designated or reserved for their rest, such as their personal vehicles.

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

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

12 **Minimum and Overtime Wage Violations**

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

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

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

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

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

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

13 152. Based on information and belief, DEFENDANTS failed to pay all owed overtime
14 wages due to a failure to properly implement an AWS and/or failure to pay all owed overtime wages
15 in accordance with the AWS.

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

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

27 155. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
28 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS

1 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
2 Wage Orders, section 20.

3 **Statutory Wage Violations**

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

15 **Refusal to Make Payment**

16 157. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
17 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
18 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
19 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
20 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
21 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
22 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
23 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

24 **Standard Conditions of Labor Violations**

25 158. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
26

27 ³ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
2 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
3 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS’
4 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
5 minimum/overtime wages and other violations described herein result in separate violations of
6 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
7 1197.1 and 2699.

8 **Business Expense Violations**

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

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

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

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

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

5 164. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and other Aggrieved
6 Employees have suffered injury in that they were not completely reimbursed as mandated by
7 California law.

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

12 166. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
13 Employees have suffered injury in that they were not completely reimbursed as mandated by
14 California law.

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

19 **Wage Statement Violations**

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

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

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

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

26 172. Based on information and belief, wage statements issued by DEFENDANTS failed
27 to list all applicable hourly rates in effect during the pay period and the corresponding number of
28 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor

1 Code section 226(a)(9).

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

6 174. Based on information and belief, wage statements issued by DEFENDANTS failed
7 to list the inclusive dates of the pay period for which the Class Member is being paid.

8 175. DEFENDANTS' failure to accurately list all hours worked on all wage statements
9 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
10 Employees over whether they received all wages owed to them.

11 176. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
12 they could not easily determine whether they received all wages owed to them and whether they
13 were paid for all hours worked.

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

17 178. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
18 Aggrieved Employees with accurate, itemized wage statements.

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

28 180. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.

1 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
2 during which the statute provisions were violated. ⁴

3 **Unlawful Deductions**

4 181. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
5 an employee any part of wages theretofore paid by said employer to said employee.” Based on
6 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
7 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
8 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
9 Section 2699.

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

16 **Seating Violations**

17 183. 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.

20 184. 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.

27 185. Suitable seating is one of the worker protections covered by California’s Wage
28

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

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

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

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

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

20 **Sick Leave Violations**

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

28 190. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees

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

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

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

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

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

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

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

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

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

1 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
2 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
3 Labor Code section 248.6.

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

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

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

16 **Untimely Payment of Final Wages**

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

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

1 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

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

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

11 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

21 205. The California Labor Code places certain procedural and substantive limits on an
22 employers’ ability to conduct employee background checks and on how employers can use the
23 information they obtain through those background checks. Labor Code section 1024.5 states that
24 employers, except for financial institutions, may order a credit check only if the individual works
25 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
26 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
27 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
28 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee

1 background check, including but not limited to identifying an appropriate reason for the background
2 check, a separate consent form with required disclosures and certain formatting requirements,
3 additional forms such as a summary of rights, a way by which to request a copy of the report, as
4 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

22 Unlawful Inquires into Criminal History

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

27 212. Upon information and belief, DEFENDANTS, in violation of California law,
28 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act

1 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
2 employment and/or otherwise impermissibly inquired into criminal history on its employment
3 application in violation of California law.

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

9 Unlawful PAGA Waiver

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

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

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

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

1 violation of labor code section 432.5.

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

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

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

8 220. Labor Code section 6401 provides as follows:

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

13 222. Labor Code section 6402 prohibits the following:

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

16 224. Similarly, Labor Code section 6404 provides as follows:

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

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

21 227. No employer shall fail or neglect to do any of the following:

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

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

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

28 231. Similarly, Labor Code section 6406(d) states the following:

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

3 233. Finally, Labor Code section 6407 provides:

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

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

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

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

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

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

25 240. At all relevant times, DEFENDANTS had and have a policy and practice of failing
26 within one business day after DEFENDANTS or a representative of DEFENDANTS received a
27 notice of potential exposure to COVID-19 to notify PLAINTIFF and other Aggrieved Employees
28 who were on the premises at the same worksite as the qualifying individual within the infectious

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

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

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

21 243. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS
22 violated the Labor Code sections described herein, including without limitation, for failure to:
23 furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to
24 employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other
25 Aggrieved Employees, who were on the premises at the same worksite as a qualifying individual
26 who was within the infectious period that they may have been exposed to COVID-19 pursuant to
27 California and local laws.

28 244. Based on information and belief, DEFENDANTS failed to protect Aggrieved

1 Employees from exposure to COVID-19 due to, including but not limited to, failing to
2 maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address
3 hazards related to the COVID-19 virus.

4 245. As such, DEFENDANTS failed to comply with the occupational safety and health
5 standards, failed to do everything reasonably necessary to protect the health and safety of
6 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
7 necessary to maintain a safe and healthful workplace.

8 246. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
9 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
10 is subject to civil penalties.

11 247. Under the provisions of PAGA and the above mentioned Labor Code sections,
12 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
13 245-248.6, 256, 432.5, 432.7, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
14 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, 6432 and all applicable Wage
15 Orders as well as all interpretations of these laws by California Courts and administrative bodies, as
16 well as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
17 penalties:

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

27 248. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
28 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 PLAINTFF, the State of California, and all Aggrieved Employees:

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

Dated: July 24, 2023

CROSNER LEGAL, PC

By: 
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