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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 LUDIM ELICEO CARPIO BUC, on behalf  
15 of the State of California, and others similarly  
16 situated and aggrieved,

17 Plaintiff,

18 v.

19 SO-CAL DOMINOIDS, INC., a California  
20 Corporation; DOMINOIDS, INC., a  
21 California Corporation; and DOES 1-100,  
22 inclusive,

23 Defendants.

Case No.: 23STCV17387

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

1 Plaintiff, LUDIM ELICEO CARPIO BUC, (“PLAINTIFF”), an individual on behalf of  
2 PLAINTIFF, the State of California, and all other Aggrieved Employees (as defined below), hereby  
3 files this Complaint against Defendants SO-CAL DOMINOIDS, INC., a California Corporation;  
4 DOMINOIDS, INC., a California Corporation; and DOES 1-100, inclusive, (collectively referred  
5 to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as  
6 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 delivery driver or a similar title from  
27 in or around December 2021 through in or around August 15, 2022. PLAINTIFF worked for  
28 DEFENDANTS at DEFENDANTS’ Los Angeles County, California locations(s).

6. DEFENDANTS are California corporations that, at all relevant times, were authorized to do business within the State of California and are doing business in the State of California.

7. DEFENDANTS own, operate, manage and/or staff its employees to work at the restaurant and/or other location(s) in California, including but not limited to the restaurant in Los Angeles County, California operating under the name Domino's and/or Domino's Pizza. DEFENDANTS, through its various locations serve the restaurant industry.

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

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

## JOINT LIABILITY

10. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49

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

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

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

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

6       13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant  
7 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved  
8 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that  
9 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'  
10 wages, hours and working conditions, and/or suffered or permitted them to work so as to be  
11 considered the joint employers of PLAINTIFF and Aggrieved Employees. For example,  
12 DEFENDANTS, and each of them, maintain the same principal place of business and agent for  
13 service of process as provided to the California Secretary of State and based on information and  
14 belief, use some of the same attorneys and/or human resources personnel to oversee employment-  
15 related matters.

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

1 collectively would evaluate their wage rates.

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

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

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

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

19 **PAGA ALLEGATIONS**

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

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

28 20. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code

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

#### 11 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

12 21. PLAINTIFF, on May 17, 2023, through counsel, gave written notice by online filing  
13 with the California Labor and Workforce Development Agency (“LWDA”) informing it that  
14 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged  
15 in this Complaint (“PAGA Notice”).

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

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

#### 22 **FACTUAL ALLEGATIONS**

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

27 25. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFFS worked for  
28 DEFENDANTS as a non-exempt employee with a job title of, delivery driver or a similar title from

1 in or around December 2021 through in or around August 15, 2022. PLAINTIFF worked for  
2 DEFENDANTS at DEFENDANTS' Los Angeles County, California location(s). PLAINTIFF  
3 regularly worked at least six (6) hours per day hours per day. DEFENDANTS paid PLAINTIFF an  
4 hourly rate for time counted by DEFENDANTS as hours worked. PLAINTIFF also earned tips.

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

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

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

20 29. Based on information and belief, Aggrieved Employees were not paid for all hours  
21 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours  
22 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-  
23 the clock work policies and/or practices. For example, based on information and belief, Aggrieved  
24 Employees were consistently required to clock out for the end of their shifts but to continue working,  
25 due to explicit instruction from management to do so, the need to complete deliveries/orders,  
26 cook/prep food, clean DEFENDANTS' facilities and/or their workstations and/or complete other  
27 work tasks, resulting in DEFENDANTS' failure to pay Aggrieved Employees for all hours worked  
28 and the underpayment of wages owed to Aggrieved Employees. For example, PLAINTIFF was

1 frequently required to clock out for the end of PLAINTIFF's shift but to continue working due to  
2 the need to complete deliveries/orders, respond to work-related communications and/or complete  
3 other work tasks. Based on information and belief, DEFENDANTS did not compensate Aggrieved  
4 Employees for time spent setting up/preparing their workstations and/or vehicles, and/or time spent  
5 cleaning/maintaining and/or clearing their work stations and/or vehicles, and/or time spent donning  
6 and doffing personal protective equipment and/or uniforms (e.g., rubber gloves, hairnets, caps/hats,  
7 and/or face masks) during meal periods, rest periods, before the start of a scheduled shift, and after  
8 completing a scheduled shift. For example, based on information and belief, prior to clocking in to  
9 work, Aggrieved Employees were required to walk to the back room and/or office to bestow any  
10 personal items and/or don uniforms and/or protective equipment before clocking in for their shifts.

11 30. Based on information and belief, Aggrieved Employees were required to complete  
12 off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they  
13 received to their phones/mobile devices and were required to respond to, including but not limited  
14 to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the  
15 underpayment of wages owed to Aggrieved Employees.

16 31. Based on information and belief, DEFENDANTS also required Aggrieved  
17 Employees to wash their hands before clocking in for their shifts, during rest periods and/or before  
18 clocking back in from meal periods, resulting in off-the-clock work and unpaid minimum wages  
19 and unpaid overtime wages as well as meal and rest period violations.

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

27 33. Based on information and belief, Aggrieved Employees experienced the same issues  
28 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'

1 control was not recorded and not compensated and resulted in unpaid minimum wages owed to  
2 Aggrieved Employees. Moreover, based on information and belief, Aggrieved Employees who  
3 opened their work locations were required to first unlock the doors, turn on all the lights in the  
4 restaurant/facility and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-  
5 the-clock work and the underpayment of wages owed to Aggrieved Employees.

6 34. Based on further information and belief, Aggrieved Employees in charge of closing  
7 their location(s) were required to first clock out for their shifts before enabling the alarm, turning  
8 off all the lights in the facility and/or locking the doors. This resulted in additional off-the-clock  
9 post-shift work that was not compensated and the underpayment of wages owed to Aggrieved  
10 Employees. Based on information and belief, at times, DEFENDANTS require/required Aggrieved  
11 Employees to travel between DEFENDANTS' restaurants, facilities and/or locations without  
12 compensating Aggrieved Employees for the travel time. For example, based on information and  
13 belief, due to scheduling issues and/or understaffing, Aggrieved Employees were at times required  
14 after working at their scheduled facility location to cover a shift at another of DEFENDANTS'  
15 restaurants/facilities/locations but were not compensated for the time spent driving to the second  
16 restaurant/facility, resulting in the underpayment of minimum and overtime wages.

17 35. Based on information and belief, DEFENDANTS required Aggrieved Employees to  
18 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their  
19 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

20 36. Moreover, based on information and belief, DEFENDANTS failed to pay  
21 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split  
22 shifts during the relevant period. For example, based on information and belief, at times,  
23 DEFENDANTS required PLAINTIFF and/or other Aggrieved Employees to work two separate  
24 shifts in the same day. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF  
25 and/or other Aggrieved Employees split shift compensation whenever PLAINTIFF's and/or other  
26 Aggrieved Employees' work schedules were interrupted by non-paid non-working periods  
27 established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See  
28 section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay

1 at the minimum wage shall be paid in addition to the minimum wage for that workday...). See, also,  
2 Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the  
3 minimum wage shall be paid in addition to the minimum wage for that workday, except when the  
4 employee resides at the place of employment).

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

13 38. Based on information and belief, DEFENDANTS failed to pay Aggrieved  
14 Employees for time they were required to spend completing orientation, policy questionnaires,  
15 and/or time spent completing the onboarding process including but not limited to reviewing various  
16 documents and policies provided by DEFEDANTS. Based on information and belief, this work time  
17 was completed off-the-clock and was not compensated. Moreover, based on information and belief,  
18 DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees for all time spent  
19 completing training and/or rounded the total hours worked for any training completed, resulting in  
20 the failure to compensate PLAINTIFF and other Aggrieved Employees for all work time and the  
21 underpayment of wages owed to PLAINTIFF and other Aggrieved Employees.

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

26 40. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,  
27 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal  
28 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of

1 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages  
2 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than  
3 forty (40) hours in a week.

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

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

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

18 44. **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 Respondents' premises due to the need to continue assigned  
2 job duties. For example, at times, PLAINTIFF was forced to take an interrupted and/or shortened  
3 meal period and/or work through his unpaid meal period completely due to the need to complete  
4 deliveries and/or complete other work tasks. Other times, PLAINTIFF was forced to wait until well  
5 beyond the fifth hour of work to take his single purportedly off-duty meal period. Based on  
6 information and belief, other Aggrieved Employees were similarly suffered, permitted and/or  
7 required to take late, interrupted and/or shortened meal periods and/or work through their meal  
8 periods completely due to the need to complete orders/deliveries, assist customers and/or complete  
9 other work tasks.

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

15 46. Based on information and belief, DEFENDANTS implemented policies and/or  
16 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control  
17 during unpaid meal periods.

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

22 48. Based on information and belief, despite DEFENDANTS' failure to provide lawful  
23 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end  
24 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically  
25 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal  
26 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved  
27 Employees did not receive lawful meal periods.

28 49. Moreover, based on information and belief, Aggrieved Employees who worked shifts

1 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

2 50. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and  
3 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further  
4 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor  
5 did DEFENDANTS have any sort of compliant policy in practice.

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

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

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

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

27 55. PLAINTIFF and other Aggrieved Employees were not adequately informed,  
28 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California

1 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to  
2 the taking or timing of duty-free rest periods.

3 56. Based on information and belief, DEFENDANTS did not have a have a compliant  
4 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in  
5 practice. For example, based on information and belief, Aggrieved Employees were frequently  
6 unable to take compliant rest periods due to Aggrieved Employees' need to complete assigned job  
7 duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had  
8 purported rest periods restricted to DEFENDANTS' premises. For example, PLAINTIFF rarely, if  
9 ever, took a full net ten-minute off-duty rest period during the relevant period due to the need to  
10 complete deliveries, assist customers and/or complete other work tasks.

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

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

17 59. Based on information and belief, DEFENDANTS implemented policies and/or  
18 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and  
19 DEFENDANTS' control during rest periods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28           74.     **Unlawful Deductions.** Labor Code section 221 prohibits an employer from

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

8       **75. Reporting Time Pay Violations.** Aggrieved Employees not paid reporting time  
9 wages in accordance with California law, including but not limited to the applicable IWC Wage  
10 Order. For example, based on information and belief, at times, Aggrieved Employees reported to  
11 work for a scheduled shift but were sent home and/or were not put to work and were not paid all  
12 owed reporting time pay wages in accordance with California law.

13       **76.** Based on information and belief, DEFENDANTS have a policy and practice of  
14 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,  
15 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS’ failure to  
16 pay all reporting time wages to Aggrieved Employees violated and continues to violate the  
17 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

18       **77. Failure to Produce Employment Records.** Based on information and belief,  
19 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current  
20 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code  
21 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF sent a  
22 written request for payroll and personnel records to DEFENDANTS. Yet, DEFENDANTS failed to  
23 timely produce complete records within the time periods delineated by California labor law,  
24 including but not limited to, time records. Based on information and belief, DEFENDANTS failed  
25 and continues to fail to timely produce complete payroll and personnel records when requested by  
26 other Aggrieved Employees. Based on information and belief, DEFENDANTS failed and continue  
27 to fail to timely produce complete time, pay, and personnel records when requested by other  
28 Aggrieved Employees.

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

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

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

21           81.     Based on information and belief, DEFENDANTS shifted the costs of doing business  
22 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on  
23 information and belief DEFENDANTS required Aggrieved Employees to pay for business  
24 expenses including but not limited to including but not limited to, the purchase and/or maintenance  
25 of uniforms/work clothing/shoes/personal protective/safety gear and/or the use of Aggrieved  
26 Employees' personal mobile phone, internet and/or data usage for work related purposes, including  
27 but not limited to, to receive and respond to work related messages and/or phone calls. For example,  
28 PLAINTIFF was required to use his personal cell phone/mobile device to perform his assigned job

1 duties, including without limitation to use a GPS app and/or for navigation purposes during  
2 PLAINTIFF's deliveries, but DEFENDANTS not provide PLAINTIFF with any and/or the legally  
3 mandated reimbursement for these business expenses, including but not limited to, reimbursement  
4 for increased data plan charges and/or other expenses incurred from DEFENDANTS' business use  
5 of PLAINTIFF's cellphone.

6 82. Based on information and belief, DEFENDANTS also required other Aggrieved  
7 Employees to download applications on their personal cell phones/mobile devices and/or use their  
8 personal cell phones/mobile devices to receive/make work-related calls and/or messages, but  
9 DEFENDANTS did not provide Aggrieved Employees with any reimbursement and/or the legally  
10 mandated reimbursement for DEFENDANTS' business use of their personal cell phones/mobile  
11 devices.

12 83. Based on information and belief, Aggrieved Employees were not reimbursed for the  
13 cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal  
14 protective/safety gear (e.g., gloves and/or face masks).

15 84. On information and belief, at times, Aggrieved Employees were required to use their  
16 personal vehicles for DEFENDANTS' business purposes, including but not limited to, for making  
17 deliveries and/or driving between and/or around DEFENDANTS'  
18 restaurants/offices/locations/facilities and/or for otherwise carrying out the duties assigned by  
19 DEFENDANTS without receiving any and/or full reimbursement from DEFENDANTS for the  
20 business use of their personal vehicles. As such, DEFENDANTS failed to compensate Aggrieved  
21 Employees at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in  
22 effect during the relevant period.

23 85. Based on information and belief, DEFENDANTS regularly failed to reimburse and  
24 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section  
25 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable  
26 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties  
27 assigned by DEFENDANTS.

28 86. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement

1 for all reasonable expenses associated with carrying out their duties required that Aggrieved  
2 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section  
3 2802.

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

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

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

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

1 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of  
2 used sick leave and the balance of paid sick leave.

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

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

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

18 94. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides  
19 that all employers with 26 or more employees are required to provide up to 80 hours for covered  
20 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care  
21 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS  
22 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-  
23 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to  
24 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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

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

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

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

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

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

20          100.    **Violation of Labor Code section 351 and 353.** Labor Code Section 351 prohibits  
21 employers and their agents from sharing in or keeping any portion of a gratuity left for or given to  
22 one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions  
23 from gratuities, or from using gratuities as direct or indirect credits against an employee's  
24 wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities  
25 received.

26          101.    Based on information and belief, DEFENDANTS failed to ensure that Aggrieved  
27 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its  
28 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor

1 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep  
2 accurate records of all tips received, in violation of Labor Code Section 353. Based on information  
3 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to  
4 Aggrieved Employees by the next regular payday following the credit card payment, in violation of  
5 Labor Code section 351.

6 102. Based on information and belief, DEFENDANTS charges an additional service  
7 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to  
8 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the  
9 entirety) of the service charge, thereby depriving Aggrieved Employees of the service  
10 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*  
11 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5<sup>th</sup> 771, 790 (a mandatory service charge can  
12 constitute a gratuity that is intended to the employees providing the service).

13 103. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period  
14 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353  
15 they experienced within the statutory period, and \$200 per pay period for each additional violation.

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

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

28 106. Upon separation of employment, Aggrieved Employees' final paychecks were not

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

7 107. For example, DEFENDANTS did not furnish PLAINTIFF with any final paycheck  
8 until at least approximately seven (7) days following the separation of PLAINTIFF's employment,  
9 and PLAINTIFF's late final paycheck was devoid of all wages owed, including but not limited to,  
10 all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave  
11 and/or paid time off wages at the properly accrued rates (including but not limited to, all owed  
12 vacation pay/paid time off paid at the final rate including non-discretionary compensation, including  
13 but not limited to, shift differentials).

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

22 109. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

23 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

1 condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

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

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

26 114. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or  
27 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code  
28 section 432.5.

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

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

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

11 Unlawful Inquires into Criminal History

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

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

21 Unlawful PAGA Waiver

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

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

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

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

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

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

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

22 125. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

23 **Failure to Keep Accurate Records**

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

28 127. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate  
and complete records as required by law, including but not limited to the following records: total  
daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other

1 Aggrieved Employees began and ended each work period, time records of meal periods, and  
2 accurate itemized wage statements.

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

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

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

16 130. Section (b) of Labor Code section 226 further requires employers to "afford current  
17 and former employees the right to inspect or receive a copy of records pertaining to their  
18 employment upon reasonable request to the employer." Section (c) of Labor Code section 226  
19 provides that, "an employer who receives a written or oral request to inspect or receive a copy of  
20 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with  
21 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A  
22 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe  
23 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from  
24 the employer. Lab. Code section 226(f).

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

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

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

14           **Meal Period Violations**

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

20           134.    Employers must also provide employees with a second duty-free, uninterrupted thirty  
21 (30) minute meal period when an employee works more than (10) hours in a workday, and it must  
22 be provided before the end of the 10<sup>th</sup> hour of work. *Ibid*.

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

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

3 136. 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.

10 137. 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.

16 138. 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.

20 139. 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.

22 140. 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.

26 141. 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.

3 142. 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**

9 143. 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).

23 144. 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.”).

5 145. 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.

11 146. 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.

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

18 148. 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.

24 149. 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.

1           **Failure to Provide Suitable Resting Facilities**

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

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

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

17           153. DEFENDANTS’ failure to provide suitable resting facilities to PLAINTIFF and  
18 Aggrieved Employees violated and continue to violate the applicable Wage Order, section 13(B)  
19 and the California Labor Code, including but not limited to section 1198.

20           **Minimum and Overtime Wage Violations**

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

28           155. California law also provides that employees in California must be paid overtime,

1 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per  
2 week or 8 hours per day. *See* Labor Code 510 and the applicable Wage Order section 3. Employers  
3 must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond  
4 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh  
5 consecutive day of work in a work week. *Ibid.*

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

13 157. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and  
14 Aggrieved Employees for all hours worked.

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

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

25 160. Based on information and belief, DEFENDANTS further violated California's  
26 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not  
27 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary  
28 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to

1 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of  
2 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and  
3 other Aggrieved Employees.

4 161. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,  
5 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS  
6 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC  
7 Wage Orders, section 20.

#### 8 **Statutory Wage Violations**

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

#### 20 **Refusal to Make Payment**

21 163. Labor Code section 216 declares unlawful an employer's refusal to pay wages due  
22 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated  
23 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all  
24 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each  
25 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*  
26 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil  
27 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for  
28

1 each Aggrieved Employee, for each pay period during which the statute provisions were violated.<sup>2</sup>

2 **Standard Conditions of Labor Violations**

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

11 **Business Expense Violations**

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

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

26 \_\_\_\_\_  
27 <sup>2</sup> 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).

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

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

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

11 170. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved  
12 Employees have suffered injury in that they were not completely reimbursed as mandated by  
13 California law.

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

18 172. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved  
19 Employees have suffered injury in that they were not completely reimbursed as mandated by  
20 California law.

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

25 **Wage Statement Violations**

26 174. California law requires every employer semi-monthly or at the time of each payment  
27 of wages to furnish its employees with an accurate itemized wage statement in writing that contains  
28 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of

1 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;  
2 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee  
3 is paid; (7) the name of the employee and only the last four digits of his or her social security number  
4 or an employee identification number other than a social security number; (8) the name and address  
5 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay  
6 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

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

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

25 177. As explained above, wage statements issued by DEFENDANTS failed to list the  
26 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,  
27 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and  
28 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices

1 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours  
2 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226  
3 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

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

14 181. DEFENDANTS' failure to accurately list all hours worked on all wage statements  
15 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved  
16 Employees over whether they received all wages owed to them.

17 182. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as  
18 they could not easily determine whether they received all wages owed to them and whether they  
19 were paid for all hours worked.

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

23 184. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and  
24 Aggrieved Employees with accurate, itemized wage statements.

25 185. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved  
26 Employees have suffered injury. The absence of accurate information on their wage statements has  
27 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and  
28 mathematical computations to determine the amount of wages owed, and will cause difficulty and

1 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the  
2 submission of inaccurate information about wages and amounts deducted from wages to state and  
3 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to  
4 participate in this lawsuit and create more difficulty and expense from having to reconstruct time  
5 and pay records than if DEFENDANT had complied with its legal obligations.

6 186. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.  
7 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period  
8 during which the statute provisions were violated.<sup>3</sup>

9 **Unlawful Deductions**

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

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

22 **Reporting Time Pay Violations**

23 189. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

28 <sup>3</sup> Labor Code § 226.3 (establishing that the civil penalty is “per employee per violation”).

1 than the minimum wage. (B) If an employee is required to report for work a second time in any one  
2 workday and is furnished less than two (2) hours of work on the second reporting said employee  
3 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the  
4 minimum wage.

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

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

#### 16 **Violation of California Day of Rest Law**

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

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

#### 27 **Seating Violations**

28 195. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be

1 provided with suitable seats when the nature of the work reasonably permits the use of seats and  
2 when they are not actively engaged in the work duties that would not permit them to be seated.

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

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

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

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

14 198. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and  
15 other Aggrieved Employees with suitable seating, and when such employees were not engaged in  
16 duties which required them to stand, no seating was placed in reasonable proximity to their  
17 workstations.

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

23 200. The Aggrieved Employees worked in various positions, including but not limited to,  
24 as crew members, pizza cooks, and/or cashiers. The nature of PLAINTIFF's and other Aggrieved  
25 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide  
26 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section  
27 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting  
28 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each

1 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a  
2 separate civil penalty.

3 **Violation of Labor Code section 351 and 353**

4 201. Labor Code Section 351 prohibits employers and their agents from sharing in or  
5 keeping any portion of a gratuity left for or given to one or more employees by a patron.  
6 Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using  
7 gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353  
8 mandates employers to keep accurate records of all gratuities received.

9 202. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved  
10 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its  
11 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor  
12 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep  
13 accurate records of all tips received, in violation of Labor Code Section 353. Based on information  
14 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to  
15 Aggrieved Employees by the next regular payday following the credit card payment, in violation of  
16 Labor Code section 351.

17 203. Based on information and belief, DEFENDANTS charges an additional service  
18 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to  
19 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the  
20 entirety) of the service charge, thereby depriving Aggrieved Employees of the service  
21 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*  
22 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5<sup>th</sup> 771, 790 (a mandatory service charge can  
23 constitute a gratuity that is intended to the employees providing the service).

24 204. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period  
25 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353  
26 they experienced within the statutory period, and \$200 per pay period for each additional violation.

1           **Sick Leave Violations**

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

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

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

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

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

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

28           211. On information and belief, PLAINTIFF alleges that all of these practices were

1 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

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

25 **Untimely Payment of Final Wages**

26 216. California Labor Code section 201(a) provides, in relevant part, that "[i]f an  
27 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and  
28 payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an

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

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

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

17 219. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These  
18 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or  
19 256.

#### 20 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

1 in violation of Labor Code section 432.5.

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

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

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

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

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

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

3                   Unlawful Inquires into Criminal History

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

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

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

18                   Unlawful PAGA Waiver

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

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

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

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

11           234. 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, 351, 353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,  
14 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as  
15 all interpretations of these laws by California Courts and administrative bodies, as well as any other  
16 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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**PRAYER FOR RELIEF**

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

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

Dated: July 24, 2023

**CROSNER LEGAL, PC**

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