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9 Attorneys for Plaintiff RAYMOND MONTES
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 RIVERSIDE**

14 RAYMOND MONTES, on behalf of the
15 State of California, and others similarly
16 situated and aggrieved,

17 Plaintiff,

18 v.

19 MEYER LOGISTICS, INC., an Indiana
20 Corporation; MEYER DISTRIBUTING,
21 INC., an Indiana Corporation; and DOES 1-
22 100, inclusive,

23 Defendants.

Case No.: **CVRI 2304397**

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

1 Plaintiff, RAYMOND MONTES (“PLAINTIFF”), an individual on behalf of PLAINTIFF,
2 the State of California, and all other Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants MEYER LOGISTICS, INC., an Indiana Corporation; MEYER
4 DISTRIBUTING, INC., an Indiana 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 Riverside 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/associate,
27 loader/unloader and/or similar job title(s) and/or position(s) from in or around October 2022 through
28 in or around late April 2023. PLAINTIFF’s job duties included but were not limited to loading and

1 unloading merchandise and/or packages and driving a delivery van and/or box truck weighing less
2 than 10,000 pounds). PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Ontario,
3 California locations(s), and PLAINTIFF regularly completed routes for DEFENDANTS in cities
4 throughout California, including but not limited to, Riverside, California. PLAINTIFF regularly
5 worked at least ten (10) to fourteen (14) hours per day hours, at least five (5) days per week.

6 6. Defendant MEYER LOGISTICS, INC. is an Indiana Corporation that, at all relevant
7 times, was authorized to do business within the State of California and is doing business in the State
8 of California.

9 7. Defendant MEYER DISTRIBUTING, INC. is an Indiana Corporation that, at all
10 relevant times, was authorized to do business within the State of California and is doing business in
11 the State of California.

12 8. DEFENDANTS own, operate, manage and/or staff its employees to work at
13 warehouses, yards, cross docks, distribution centers, and/or offices and/or other location(s) in
14 California, including but not limited to the warehouses, yard, cross docks, offices, and/or
15 distribution centers in Ontario, California. DEFENDANTS, through its various warehouses, yards,
16 cross docks, distribution centers, and/or offices and/or other locations serve the logistics and/or
17 transportation industry.

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

24 10. PLAINTIFF is further informed and believes that, at all relevant times, each
25 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
26 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
27 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
28 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all

1 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
2 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
3 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
4 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
5 controlled, aided and abetted the conduct of all other Defendants.

6 **JOINT LIABILITY**

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

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

1 or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF
2 and Aggrieved Employees to work for them.

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

16 14. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
17 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
18 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
19 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
20 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
21 considered the joint employers of PLAINTIFF and Aggrieved Employees. For example, the contact
22 information as provided on the website for MEYER DISTRIBUTING, INC.
23 (<https://www.meyerdistributing.com/en-us/contact.aspx>) is the principal address for Defendant
24 MEYER LOGISTICS, INC. as provided to the California Secretary of State. Also, based on
25 information and belief, DEFENDANTS, and each of them, maintain the same individual agent for
26 service of process and/or principal place of business as provided to the California Secretary of State
27 and use some of the same attorneys and/or human resources personnel to oversee employment-
28 related matters.

1 15. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
2 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
3 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
4 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
5 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
6 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively
7 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of
8 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
9 and other Aggrieved Employees' employment with or without cause. Upon information and belief,
10 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
11 writing the details of their compensation, and the manner in which they were to take meal and rest
12 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
13 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
14 collectively would evaluate their wage rates.

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

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

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

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

4 **PAGA ALLEGATIONS**

5 20. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
6 of the State of California and all Aggrieved Employees, regarding violations of the California Labor
7 Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

8 All current and former non-exempt employees that worked either
9 directly or via a staffing agency for any one or more of the
10 DEFENDANTS at any location in California at any time from one
11 year plus 65 days from the filing of the initial Complaint through the
12 present (“PAGA Period”).

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

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

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

23. The PAGA Notice outlined PLAINTIFF's claims for violations of the California Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved Employees.

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

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

FACTUAL ALLEGATIONS

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

27. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title of delivery driver/associate, loader/unloader and/or similar job title(s) and/or position(s) from in or around October 2022 through in or around late April 2023. PLAINTIFF's job duties, included but were not limited to, loading and unloading merchandise and/or packages and driving a delivery van and/or box truck weighing less than 10,000 pounds. DEFENDANTS assigned PLAINTIFF to work out of DEFENDANTS' location and/or facilities located in Ontario, California, and PLAINTIFF regularly completed routes for DEFENDANTS in cities throughout California, including but not limited to, Riverside, California. PLAINTIFF regularly worked at least ten (10) to fourteen (14) hours per day, at least five (5) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an

1 hourly basis for time counted by DEFENDANTS as hours worked.

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

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

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

17 31. Based on information and belief, Aggrieved Employees were not paid for all hours
18 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
19 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
20 the clock work policies and/or practices. Based on information and belief, DEFENDANTS required
21 Aggrieved Employees to be at their assigned workstations in DEFENDANTS' facilities and/or their
22 assigned vehicles at the start of a scheduled shift, thereby forcing Aggrieved Employees to gather
23 work-related equipment/tools and/or safety gear and/or perform pre-trip vehicle and/or equipment
24 inspections prior to their scheduled shift and/or prior to clocking in, thereby resulting in pre-shift
25 off-the-clock work.

26 32. Based on information and belief, DEFENDANTS did not compensate Aggrieved
27 Employees for all time spent donning and doffing personal protective equipment, safety equipment
28 and/or uniforms/work clothing (e.g., gloves, reflective vests, and/or face masks) during meal periods

1 before the start of a scheduled shift, and after completing a scheduled shift. Based on information
2 and belief, at times, Aggrieved Employees were required to complete other work tasks outside of
3 their reported work time, before clocking in for the start of their shift and/or after clocking out for
4 the end of their shift and/or otherwise outside of their scheduled shift times resulting in
5 DEFENDANTS' failure to compensate Aggrieved Employees for all hours worked and the
6 underpayment of minimum wages and overtime wages to Aggrieved Employees. For example,
7 based on information and belief, Aggrieved Employees were required to complete off-the-clock
8 work outside of scheduled shifts due to, including but not limited to, work-related phone calls and/or
9 messages they received to their personal phones and were required to respond to, including but not
10 limited to, communications from supervisors and/or other Aggrieved Employees regarding
11 scheduling and/or other work tasks, resulting in the underpayment of minimum and overtime wages
12 owed to Aggrieved Employees.

13 33. Based on information and belief, DEFENDANTS required Aggrieved Employees to
14 undergo security screenings before and/or after a scheduled shift and/or before or after clocking
15 in/out for work, resulting in pre-shift and/or post-shift off-the-clock work. For example, based on
16 information and belief, Aggrieved Employees working in DEFENDANTS' facilities, were required
17 to undergo security screenings and/or other mandated screenings before and/or after a scheduled
18 shift and/or before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-
19 clock work. Based on information and belief, DEFENDANTS required Aggrieved Employees to
20 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
21 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

22 34. Moreover, based on information and belief, at times, DEFENDANTS' electronic
23 time-keeping system/app malfunctioned such that Aggrieved Employees were required to either
24 reinitiate and/or otherwise troubleshoot the system and/or wait for the system to boot prior to being
25 able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in
26 from meal periods, resulting in off-the-clock work and the underpayment of wages owed to
27 Aggrieved Employees. Based on information and belief, Aggrieved Employees experienced the
28 same issues when clocking out for shifts and/or back in for meal periods. This time spent under

1 DEFENDANTS' control was not recorded and not compensated and resulted in unpaid minimum
2 wages owed to Aggrieved Employees.

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

8 36. Based in information and belief, DEFENDANTS implemented a time-rounding
9 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
10 compensable time because the time-rounding system implemented by DEFENDANTS would
11 almost always, if not always, result in understating actual compensable work time. For example,
12 based on information and belief, DEFENDANTS rounded PLAINTIFF's and other Aggrieved
13 Employees' total hours worked to the nearest quarter, half, and/or whole hour during most, if not all
14 pay periods during the relevant period, resulting in the underpayment of wages owed to PLAINTIFF
15 and other Aggrieved Employees. For example, DEFENDANTS' wage statement for PLAINTIFF
16 for pay date of March 17, 2023, shows precisely 72.00 hours worked. Similarly, DEFENDANTS'
17 wage statement for PLAINTIFF for pay date of March 31, 2023 shows precisely 56.00 hours
18 worked. Based on information and belief, DEFENDANTS also rounded to at least the nearest
19 quarter, half and/or whole hour the total hours worked of other Aggrieved Employees, resulting in
20 the failure to pay Aggrieved Employees for all work time.

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

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

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

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

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

13 41. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
14 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
15 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
16 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
17 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
18 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
19 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
20 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
21 completely. For example, per DEFENDANTS' unlawful meal period policy and practice,
22 DEFENDANTS only allowed for a single purported meal period per shift even on shifts lasting
23 longer than ten (10) and/or twelve (12) and/or fifteen (15) hours. Moreover, based on information
24 and belief, at times, at times, PLAINTIFF and other Aggrieved Employees were required to work
25 through their single meal period, take shortened, late and/or on-duty meal periods due to, including
26 but not limited to, the need to complete assigned work tasks.

27 42. Based on information and belief, Aggrieved Employees working in DEFENDANTS'
28 facilities, including but not limited to, Aggrieved Employees working as warehouse operators and/or

1 other similar title(s) and/or position(s) were also forced to take late meal periods, short meal periods,
2 interrupted meal periods and/or skip meal periods completely due to their need to complete their job
3 duties and/or meet supply demands/deadlines.

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

9 44. Based on information and belief, DEFENDANTS implemented policies and/or
10 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
11 during unpaid meal periods.

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

16 46. Based on information and belief, despite DEFENDANTS' failure to provide lawful
17 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
18 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
19 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
20 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
21 Employees did not receive lawful meal periods.

22 47. Moreover, based on information and belief, Aggrieved Employees who worked shifts
23 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.
24 For example, when Aggrieved Employees worked more than ten (10) and/or twelve (12) hours, they
25 were not afforded any version of a second meal period.

26 48. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
27 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
28 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor

1 did DEFENDANTS have any sort of compliant policy in practice.

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

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

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

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

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

27 54. Based on information and belief, DEFENDANTS did not have a have a compliant
28 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in

1 practice. For example, during the relevant period, PLAINTIFF was rarely, if ever, afforded a legally
2 compliant rest period due to the need to complete deliveries in a timely manner and/or meet delivery
3 windows, provide status updates to DEFENDANTS regarding deliveries and/or communicate with
4 DEFENDANTS via phone calls and/or text message and/or complete other related work tasks.
5 Based on information and belief, other Aggrieved Employees working in DEFENDANTS' facilities
6 were similarly required to work through their owed rest periods due to the need to meet supply
7 demands/work deadlines, respond to work-related communications and/or complete other work
8 tasks.

9 55. Moreover, based on information and belief, DEFENDANTS failed to authorize and
10 permit rest periods that were a "net" ten minutes in a suitable rest area and instead, to the extent rest
11 periods were provided at all, limited Aggrieved Employees to only ten-minute rest periods, requiring
12 them to be back at their workstations within ten minutes of leaving, in violation of California rest
13 period law. DEFENDANTS' failure to communicate that the rest period is a net ten minutes
14 deprived Aggrieved Employees of their rights to a full rest period, as such as policy only relieves
15 Aggrieved Employees from their workstation for ten minutes to travel to and from a rest area and
16 be back at the workstation by the end of that ten minutes.

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

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

23 58. Based on information and belief, DEFENDANTS implemented policies and/or
24 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
25 DEFENDANTS' control during rest periods.

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

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

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

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

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

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

27 65. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
28 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied

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

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

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

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

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

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

28 71. Based on further information and belief, DEFENDANTS issued wage statements to

1 Aggrieved Employees that failed to list the accurate total hours worked whenever shift differential
2 wages were paid in violation of Labor Code section 226.

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

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

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

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

26 76. **Unreimbursed Business Expenses.** Based on information and belief,
27 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
28 as a direct consequence of the performance of their job duties without providing reimbursement, in

1 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
2 Aggrieved Employees were improperly required to provide and maintain work tools that are
3 supposed to be the responsibility of the employer.

4 77. Based on information and belief, DEFENDANTS shifted the costs of doing business
5 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
6 to, the purchase and/or maintenance of uniforms/work clothing/personal protective/safety gear
7 and/or the use of Aggrieved Employees' personal mobile phone, internet and/or data usage for work
8 related purposes, including but not limited to, to receive and respond to work related messages
9 and/or phone calls. For example, DEFENDANTS required PLAINTIFF to download and regularly
10 use an employee timekeeping application on his personal cell phone/mobile device but did not
11 provide PLAINTIFF with any reimbursement for these business expenses, including but not limited
12 to, reimbursement for increased data plan charges and/or other expenses incurred from
13 DEFENDANTS' business use of his cellphone.

14 78. Based on information and belief, DEFENDANTS also required other Aggrieved
15 Employees to download applications on their personal cell phones/mobile devices and/or use their
16 personal cell phones/mobile devices to receive/make work-related calls and/or messages, but
17 DEFENDANTS did not provide Aggrieved Employees with any reimbursement and/or the legally
18 mandated reimbursement for DEFENDANTS' business use of their personal cell phones/mobile
19 devices.

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

23 80. Based on information and belief, Aggrieved Employees were improperly required to
24 pay for additional business expenses, including but not limited to, hand tools/equipment and/or cost
25 of gas, costs of repairs, tolls/fines and/or other work-related fees/fines, incurred as a direct
26 consequence of the discharge of their assigned job duties without receiving any and/or full
27 reimbursement from DEFENDANTS for these expenses.

28 81. On information and belief, at times, Aggrieved Employees were required to use their

1 personal vehicles for DEFENDANTS' business purposes, including but not limited to, for driving
2 between and/or around DEFENDANTS' job sites/locations/facilities and/or for otherwise carrying
3 out the duties assigned by DEFENDANTS without receiving any and/or full reimbursement from
4 DEFENDANTS for the business use of their personal vehicles. As such, DEFENDANTS failed to
5 compensate Aggrieved Employees at the legally mandated Internal Revenue Service (IRS) per mile
6 compensation rates in effect during the relevant period.

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

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

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

26 85. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
27 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
28 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,

1 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
2 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
3 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
4 used sick leave and the balance of paid sick leave.

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

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

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

20 89. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
21 that all employers with 26 or more employees are required to provide up to 80 hours for covered
22 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
23 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
24 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
25 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
26 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

27 90. **Seating Violations.** Per section 14(A-B) of all applicable IWC Wage Orders,
28 employees shall be provided with suitable seats when the nature of the work reasonably permits the

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

3 91. 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 92. 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 93. Based on information and belief, DEFENDANTS failed to provide Aggrieved
15 Employees with suitable seating, and when such employees were not engaged in duties which
16 required them to stand, no seating was placed in reasonable proximity to their workstations.

17 94. DEFENDANTS' Aggrieved Employees worked in various positions, including but
18 not limited to, as warehouse workers, general laborers and/or other similar title(s) and/or position(s).
19 Moreover, the nature of the work reasonably permitted the use of seats for at least part of the time
20 that Aggrieved Employees were working. Lastly, there were periods of time when Aggrieved
21 Employees were not engaged in active duties of their employment, yet there were no suitable seats
22 in reasonable proximity to the work area and use of seats would not interfere with the performance
23 of their duties.

24 95. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
25 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
26 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
27 failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation
28 pay/paid time off paid at the final rate including non-discretionary compensation, including but not

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

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

8 97. Upon separation of employment, Aggrieved Employees' final paychecks were not
9 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
10 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
11 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
12 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
13 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate
14 including non-discretionary compensation, including but not limited to, shift differentials).

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

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

24 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

2 101. 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.

7 102. 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.

16 103. 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 FRCA,
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.

26 104. 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.

1 105. 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.

6 106. 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.

9 107. 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

12 108. 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.

16 109. 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

22 110. 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.

25 111. 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.”)

3 112. 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.’”)

8 113. 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.

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

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

28 ///

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

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

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

Failure to Keep Accurate Records

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

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

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

Meal Period Violations

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

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

1 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
2 *Court* (2012) 53 Cal.4th 1004.

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

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

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

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

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

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

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

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

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

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

19 **Rest Period Violations**

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

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

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

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

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

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

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

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

10 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

1 **Minimum and Overtime Wage Violations**

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

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

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

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

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

1 Employees.

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

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

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

17 **Statutory Wage Violations**

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

1 **Refusal to Make Payment**

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

10 **Standard Conditions of Labor Violations**

11 151. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
12 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
13 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
14 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
15 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
16 minimum/overtime wages and other violations described herein result in separate violations of
17 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
18 1197.1 and 2699.

19 **Business Expense Violations**

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

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

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

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

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

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

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

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

26 159. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved
27 Employees have suffered injury in that they were not completely reimbursed as mandated by
28 California law.

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

5 **Wage Statement Violations**

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

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

23 163. Moreover, due to violations detailed above, including but not limited to,
24 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
25 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
26 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
27 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
28 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based

1 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
2 compensation earned during the pay period into the regular rate of pay for purposes of calculating
3 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
4 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

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

22 168. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
23 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
24 Employees over whether they received all wages owed to them.

25 169. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
26 they could not easily determine whether they received all wages owed to them and whether they
27 were paid for all hours worked.

28 170. Moreover, as a result of DEFENDANTS’ failure to list the correct name and/or

1 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered
2 injury as they could not contact their employer regarding any question(s) they had about wages paid.

3 171. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
4 Aggrieved Employees with accurate, itemized wage statements.

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

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

17 **Unlawful Deductions**

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

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

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

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

3 **Reporting Time Pay Violations**

4 176. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

24 **Seating Violations**

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

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

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

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

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

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

15 184. 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.

20 185. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
21 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
22 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
23 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
24 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
25 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
26 Aggrieved Employee, results in a separate civil penalty.

27 **Sick Leave Violations**

28 186. DEFENDANTS violated California's paid sick leave laws including, Labor Code

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

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

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

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

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

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

26 192. On information and belief, PLAINTIFF alleges that all of these practices were
27 experienced and continue to be experienced by other Aggrieved Employees.

28 193. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the

1 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
2 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

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

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

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

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

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

23 **Untimely Payment of Final Wages**

24 197. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
25 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
26 payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an
27 employee not having a written contract for a definite period quits his or her employment, his or her
28 wages shall become due and payable not later than 72 hours thereafter, unless the employee has

1 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
2 to his or her wages at the time of quitting.”

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

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

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

18 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

19 201. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
20 require any employee or applicant for employment to agree, in writing, to any term or condition
21 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
22 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
23 conditions of employment including but not limited to unlawful criminal and/or financial checks as
24 a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

25 202. The California Labor Code places certain procedural and substantive limits on an
26 employers’ ability to conduct employee background checks and on how employers can use the
27 information they obtain through those background checks. Labor Code section 1024.5 states that
28 employers, except for financial institutions, may order a credit check only if the individual works

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

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

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

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

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

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

26 Unlawful Inquires into Criminal History

27 208. Labor Code section 432.7 prohibits an employer from asking applicants about past
28 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on

1 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
2 convictions on its employment application, in violation of California law.

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

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

13 Unlawful PAGA Waiver

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

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

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

28 214. Upon information and belief, DEFENDANTS required Aggrieved Employees to

1 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
2 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS
3 required written agreement to an unlawful provision as a condition of employment which is a
4 violation of labor code section 432.5.

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

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

9 216. (a) Every employer shall furnish employment and a place of employment that is safe
10 and healthful for the employees therein...

11 217. Labor Code section 6401 provides as follows:

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

16 219. Labor Code section 6402 prohibits the following:

17 220. No employer shall require, or permit any employee to go or be in any employment
18 or place of employment which is not safe and healthful.

19 221. Similarly, Labor Code section 6404 provides as follows:

20 222. No employer shall occupy or maintain any place of employment that is not safe and
21 healthful.

22 223. In addition to the above, Labor Code section 6403 requires that employees provide
23 safety devices to its employees. Labor Code section 6403 states:

24 224. No employer shall fail or neglect to do any of the following:

25 225. (a) To provide and use safety devices and safeguards reasonably adequate to render
26 the employment and place of employment safe.

27 226. (b) To adopt and use methods and processes reasonably adequate to render the
28 employment and place of employment safe.

1 227. (c) To do every other thing reasonably necessary to protect the life, safety, and health
2 of employees.

3 228. Similarly, Labor Code section 6406(d) states the following:

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

6 230. Finally, Labor Code section 6407 provides:

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

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

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

27 234. PLAINTIFF is informed and believes and thereon alleges that these failures include,
28 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or

1 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to
2 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
3 conditions between PLAINTIFF and/or other Aggrieved Employees.

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

12 236. At all relevant times, DEFENDANTS had and have a policy and practice of failing
13 within one business day after DEFENDANTS or a representative of DEFENDANTS received notice
14 of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other Aggrieved
15 Employees and/or their exclusive representatives, who were on the premises at the same worksite
16 as a qualifying individual who was within the infectious period that they may have been exposed to
17 COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and
18 practice of failing within one business day after DEFENDANTS or a representative of EMLOYER
19 received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other Aggrieved
20 Employees who were on the premises at the same worksite as the qualifying individual within the
21 infectious period and the exclusive representative, if any, with information regarding COVID-19-
22 related benefits to which the employee may be entitled under applicable federal, state or local laws,
23 including but not limited to, workers' compensation, and options for exposed employees, including
24 COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or
25 negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the
26 employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and
27 6432.

28 237. At all relevant times, DEFENDANTS had and have a policy and practice of failing

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

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

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

24 240. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS
25 violated the Labor Code sections described herein, including without limitation, for failure to:
26 furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to
27 employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other
28 Aggrieved Employees, who were on the premises at the same worksite as a qualifying individual

1 who was within the infectious period that they may have been exposed to COVID-19 pursuant to
2 California and local laws.

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

7 242. As such, DEFENDANTS failed to comply with the occupational safety and health
8 standards, failed to do everything reasonably necessary to protect the health and safety of
9 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
10 necessary to maintain a safe and healthful workplace.

11 243. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
12 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
13 is subject to civil penalties.

14 244. Under the provisions of PAGA and the above mentioned Labor Code sections,
15 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
16 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
17 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, 6432 and all applicable
18 Wage Orders as well as all interpretations of these laws by California Courts and administrative
19 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
20 the following penalties:

- 21 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
22 relevant California Labor Code provisions listed herein only if permitted by the
23 PAGA statute, pursuant to Labor Code section 2699(a); and
24 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
25 violations without a civil penalty recoverable under the PAGA, all in the default
26 amounts provided by Labor Code section 2699(f).
27 c. The proper measure of penalties under PAGA is the number of violations,
28 whether those violations were committed as against PLAINTIFF or any

1
2 **PRAYER FOR RELIEF**

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

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

12 Dated: August 17, 2023

CROSNER LEGAL, PC

13
14 By: 

15 Zachary M. Crosner, Esq.
16 Jamie Serb, Esq.
17 Brandon Brouillette, Esq.
18 Attorneys for Plaintiff
19 RAYMOND MONTES
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