

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

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

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

14 JOSE ROMO, on behalf of the State of
15 California, and others similarly situated and
16 aggrieved,

17 Plaintiff,

18 v.

19 KS AUTOMOTIVE VALENCIA, LLC, a
20 Delaware Limited Liability Company;
21 HELLO AUTO HOLDINGS, LLC, a
22 Delaware Limited Liability Company;
23 HELLO K SC, LLC, a Delaware Limited
24 Liability Company; and DOES 1-100,
25 inclusive,

26 Defendants.

Case No.: **23STCV16696**

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

1 Plaintiff, JOSE ROMO (“PLAINTIFF”), an individual on behalf of PLAINTIFF, the State
2 of California, and all other Aggrieved Employees (as defined below), hereby files this Complaint
3 against Defendants KS AUTOMOTIVE VALENCIA, LLC, a Delaware Limited Liability
4 Company; HELLO AUTO HOLDINGS, LLC, a Delaware Limited Liability Company; HELLO K
5 SC, LLC, a Delaware Limited Liability Company; and DOES 1-100, inclusive, (collectively referred
6 to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as
7 follows:

8 **INTRODUCTION**

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

14 **JURISDICTION AND VENUE**

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

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

23 **THE PARTIES**

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

26 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
27 DEFENDANTS as a non-exempt employee with a job title of parts counterperson and/or a similar
28 title and/or position from in or around April 25, 2022, through in or around July 18, 2022.

1 PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Valencia, California locations(s).

2 6. DEFENDANTS are Delaware limited liability companies that, at all relevant times,
3 were authorized to do business within the State of California and are doing business in the State of
4 California.

5 7. DEFENDANTS own, operate, manage and/or staff its employees to work at
6 automotive dealerships and/or other location(s) in California, including but not limited to at least
7 six (6) automotive dealerships in California, including but not limited to, the automotive dealership
8 in Valencia, California, operating under the name "Hello Mazda of Valencia," where
9 DEFENDANTS assigned PLAINTIFF to work during the relevant period. DEFENDANTS, through
10 its various locations serve the automotive industry.¹ DEFENDANTS assigned PLAINTIFF and
11 Aggrieved Employees to work at DEFENDANTS' locations throughout California.

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

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

26 ¹ See <https://www.helloautogroup.com/locations/>. Last visited on July 17, 2023. DEFENDANTS currently
27 own, manage and/or operate Hello Mazda of Valencia, Hello Kia of Valencia, Hello Subaru of Valencia,
28 Hello Mazda of Temecula, Hello Subaru of Temecula, and Hello Mazda of San Diego. DEFENDANTS
will also own, manage and/or operate Kia of Calabasas.

1 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
2 controlled, aided and abetted the conduct of all other Defendants.

3 **JOINT LIABILITY**

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

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

28 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times

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

13 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
14 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
15 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
16 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
17 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
18 considered the joint employers of PLAINTIFF and Aggrieved Employees. For example, based on
19 information and belief, DEFENDANTS, and each of them, maintain the same principal place of
20 business (on Creekside Road in Valencia, California) and/or the same Agent for Service of Process
21 as provided to the California Secretary of State.

22 14. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
23 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
24 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
25 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
26 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
27 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively
28 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of

1 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
2 and other Aggrieved Employees' employment with or without cause. Upon information and belief,
3 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
4 writing the details of their compensation, and the manner in which they were to take meal and rest
5 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
6 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
7 collectively would evaluate their wage rates.

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

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

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

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

25 **PAGA ALLEGATIONS**

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

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

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

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

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

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

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

28 **FACTUAL ALLEGATIONS**

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

5 25. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFFS worked for
6 DEFENDANTS as a non-exempt employee with a job title of, parts counterperson or a similar
7 title/position from in or around April 25, 2022, through in or around July 18, 2022. PLAINTIFF
8 worked for DEFENDANTS at DEFENDANTS' Valencia, California location(s).

9 26. PLAINTIFF regularly worked at least eight (8) to nine (9) hours, at least five (5) to
10 six (6) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
11 DEFENDANTS as hours worked. PLAINTIFF was also compensated with bonuses/incentive pay
12 and/or commissions such as but not limited to, commissions based on parts sold and/or with other
13 non-discretionary remuneration. Based on information and belief, other Aggrieved Employees were
14 also compensated with bonuses/incentive pay, spiffs and/or commissions, including but not limited
15 to, bonuses and/or commissions for repairs completed and/or parts sold, and/or were compensated
16 with other non-discretionary remuneration.

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

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

26 29. Based on information and belief, DEFENDANTS implemented a policy and/or
27 practice of rounding meal period start and end times and/or automatically deducting at least thirty
28 minutes per shift for meal periods, despite having actual and/or constructive knowledge that

1 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
2 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
3 PLAINTIFF and Aggrieved Employees of all wages owed.

4 30. Based on information and belief, Aggrieved Employees were not paid for all hours
5 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
6 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
7 the clock work policies and/or practices. For example, Aggrieved Employees were required to
8 perform pre-shift and/or post-shift work that was neither recorded nor compensated. For example,
9 based on information and belief, DEFENDANTS suffered, permitted, explicitly instructed and/or
10 otherwise required Aggrieved Employees to perform pre-shift and/or post-shift off-the-clock work,
11 such as but not limited to, contacting prospective customers/customers, completing paperwork
12 and/or data entry, cleaning and/or setting up DEFENDANTS' facilities and/or show room(s),
13 making and/or responding to work-related communications and/or completing other off-the-clock
14 work tasks that were neither recorded nor compensated, resulting in DEFENDANTS' failure to pay
15 Aggrieved Employees for all hours worked and the underpayment of minimum wages and overtime
16 wages.

17 31. Based on information and belief, prior to beginning a scheduled shift, Aggrieved
18 Employees were required to start and/or boot all of DEFENDANTS' computer systems, phone
19 systems, and/or software so as to have all systems running at the start of the scheduled shift. As
20 such, based on information and belief, Aggrieved Employees at times spent at least 10-15 minutes
21 before each scheduled shift preparing different work applications in order to clock in and begin their
22 shifts. This pre-shift work was off-the-clock and uncompensated resulting in unpaid minimum and
23 overtime wages.

24 32. Based on information and belief, at times, Aggrieved Employees were required to
25 complete other work tasks outside of their reported work time, before clocking in for the start of
26 their shift and/or after clocking out for the end of their shift and/or otherwise outside of their
27 scheduled shift times resulting in DEFENDANTS' failure to compensate Aggrieved Employees for
28 all hours worked and the underpayment of minimum wages and overtime wages to Aggrieved

1 Employees. For example, based on information and belief, Aggrieved Employees were required to
2 complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-
3 related phone calls and/or messages they received to their phones and were required to respond to,
4 including but not limited to, communications from supervisors and/or other employees regarding
5 scheduling and/or other work tasks, resulting in the underpayment of minimum and overtime wages
6 owed to Aggrieved Employees.

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

16 34. Based on information and belief, at times, DEFENDANTS instituted a piece-rate-
17 based compensation scheme that resulted in pay periods during which Aggrieved Employees were
18 denied the minimum wage for all hours worked. For example, on information and belief, at times,
19 DEFENDANTS paid Aggrieved Employees on a strictly commission and/or piece-rate basis (e.g.,
20 per repair/service job and/or sale completed and/or using a flagged hour basis), at least during some
21 pay periods, during the relevant time period.

22 35. However, based on information and belief, DEFENDANTS failed to separately
23 compensate Aggrieved Employees for all non-piece rate related activities/all non-productive time,
24 including but not limited to, all rest breaks and/or time spent preparing/setting up for jobs, time
25 spent completing paperwork, waiting between jobs and tasks and/or other waiting time, and/or
26 performing work duties that otherwise fall outside of the piece-rate pay criteria. DEFENDANTS'
27 failure to separately compensate Aggrieved Employees for their rest periods and/or other non-
28 productive time and/or failure to compensate them at the correct rates for all non-productive time

1 including rest periods resulted in the failure to pay Aggrieved Employees for all hours worked and
2 violations of California wage and hour laws, including but not limited to, Labor Code sections 226.2
3 and/or 1197. Based on information and belief, DEFENDANTS further failed to include this
4 information on these employees' wage statements required by Labor Code section 226.2.

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

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

1 38. Based in information and belief, DEFENDANTS implemented a time-rounding
2 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
3 compensable time because the time-rounding system implemented by DEFENDANTS would
4 almost always, if not always, result in understating actual compensable work time.

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

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

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

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

25 43. For example, based on information and belief, DEFENDANTS compensated
26 PLAINTIFF and other Aggrieved Employees with bonuses, incentive pay, spiffs, piece rate pay
27 and/or commissions and/or other non-discretionary remuneration yet failed to incorporate all non-
28 discretionary remuneration into the regular pay rate(s) used to calculate the owed overtime rate(s),

1 resulting in the miscalculation and underpayment of overtime wages owed to Aggrieved Employees.

2 44. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
3 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
4 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
5 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
6 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
7 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
8 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
9 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
10 completely. For example, on most if not all Saturdays PLAINTIFF worked during the relevant
11 period, PLAINTIFF was required to work through his owed meal periods due to the need to
12 complete assigned job duties. Based on information and belief, other times, PLAINTIFF was forced
13 to take his meal period beyond the fifth hour of work and/or cut his meal period short, due to the
14 understaffing, lack of coverage, the need to fill orders and/or assist customers and/or complete other
15 work tasks. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF a meal
16 period premium for each missed, interrupted and/or otherwise legally noncompliant meal period.
17 Based on information and belief, other Aggrieved Employees were also forced to take late meal
18 periods in order to complete assigned job duties. Based on information and belief, other Aggrieved
19 Employees were at times, interrupted during purported meal periods, required to work through their
20 meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises due
21 to the need to continue assigned job duties.

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

27 46. Based on information and belief, DEFENDANTS implemented policies and/or
28 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control

1 during unpaid meal periods.

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

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

12 49. Moreover, based on information and belief, Aggrieved Employees who worked shifts
13 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

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

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

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

28 53. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an

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

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

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

15 **56.** Based on information and belief, DEFENDANTS did not have a have a compliant
16 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
17 practice. For example, PLAINTIFF was frequently required to work through part or all of his owed
18 rest periods during most if not all shifts worked due to including but not limited to, understaffing,
19 lack of coverage, the need to fill out orders/ assist customers and/or complete other work tasks.
20 Based on information and belief, other Aggrieved Employees were also unable to take compliant
21 rest periods due to their need to complete assigned job duties and/or were unable to take a net ten-
22 minute rest period in a suitable rest area and/or had purported rest periods restricted to
23 DEFENDANTS' premises.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 69. For example, as explained herein, DEFENDANTS compensated PLAINTIFF and
27 other Aggrieved Employees with bonuses, incentive pay, spiffs, piece rate pay and/or commissions
28 and/or other non-discretionary remuneration yet failed to incorporate all non-discretionary

1 remuneration into the regular pay rate(s) used to calculate the owed overtime rate(s). As such, wage
2 statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the
3 pay period and the corresponding number of hours worked at each hourly rate by the employee, in
4 violation of Labor Code section 226(a)(9).

5 70. Based on information and belief, as to Aggrieved Employees compensated on a
6 piece-rate basis, DEFENDANTS failed, and continue to fail to issue accurate wage statements by
7 not documenting the total hours of compensable rest and/or recovery periods and/or for other non-
8 productive time, the rates of compensation for these hours, and the gross wages paid for these hours,
9 in violation of, including but not limited to California Labor Code section 226(a) and/or 226.2

10 71. Based on further information and belief, wage statements issued by DEFENDANTS
11 fail to list the number of piece-rate units earned and/or any applicable piece rate for those Aggrieved
12 Employees compensated on a piece-rate basis, in violation of Labor Code section 226(a)(3).

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

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

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

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

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

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

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

6 **78. Failure to Produce Employment Records.** Based on information and belief,
7 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
8 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code
9 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF sent a
10 written request for payroll and personnel records to DEFENDANTS. Yet, DEFENDANTS failed to
11 timely produce complete records within the time periods delineated by California labor law. Based
12 on information and belief, DEFENDANTS failed and continues to fail to timely produce complete
13 payroll and personnel records when requested by other Aggrieved Employees. Based on information
14 and belief, DEFENDANTS failed and continue to fail to timely produce complete time, pay, and
15 personnel records when requested by other Aggrieved Employees.

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

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

1 described herein.

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

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

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

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

28 85. **Unreimbursed Business Expenses.** Based on information and belief,

1 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
2 as a direct consequence of the performance of their job duties without providing reimbursement, in
3 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
4 Aggrieved Employees were improperly required to provide and maintain work tools that are
5 supposed to be the responsibility of the employer.

6 86. Based on information and belief, DEFENDANTS shifted the costs of doing business
7 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
8 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
9 including but not limited to uniforms, work clothing/shoes, protective equipment/safety gear (e.g.,
10 gloves and/or face masks) and/or the use of Aggrieved Employees' personal mobile phone and data
11 usage for work-related purposes, including but not limited to, receiving and responding to work
12 related messages and/or phone calls. For example, on information and belief, PLAINTIFF and other
13 Aggrieved Employees received work-related calls/messages to their personal phones from managers
14 and/or supervisors and/or other employees regarding scheduling and other work tasks. Moreover,
15 based on information and belief, Aggrieved Employees also were required to use and did use
16 personal devices to perform work duties at home/remotely, such as, but not limited to, reviewing
17 and/or completing work-related paperwork and/or other documents as mandated by
18 DEFENDANTS, however DEFENDANTS failed to provide reimbursement / full reimbursement
19 for expenses Aggrieved Employees incurred as a result of working for DEFENDANTS remotely
20 and/or from their homes, including but not limited to, cost of internet service, home electricity, cost
21 of additional memory and/or virus software for home computer / home computer use, among other
22 business expenses associated with remote work required by DEFENDANTS.

23 87. Based on information and belief, Aggrieved Employees were not reimbursed for the
24 business use of their personal vehicles, including but not limited to, mileage, wear and tear, and/or
25 cost of fuel when they were required to drive between job sites/facilities and/or otherwise use their
26 personal vehicles for DEFENDANTS' business purposes. For example, based on information and
27 belief, at times, Aggrieved Employees were required to use their personal vehicles to drive between
28 DEFENDANTS' various facilities, offices and/or locations but were not provided any and/or full

1 reimbursement for DEFENDANTS' business use of their personal vehicles. As such,
2 DEFENDANTS failed to compensate Aggrieved Employees at the Internal Revenue Service (IRS)
3 mandated per mile compensation rate for the relevant period.

4 88. Based on further information and belief, at times, Aggrieved Employees were at
5 times required to supply (purchase and/or maintain) their own hand tools they required to perform
6 their assigned job duties, however, they did not receive any and/or full reimbursement from
7 DEFENDANTS for the expenses incurred in connection therewith.

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

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

17 91. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
18 provides as follows:

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

27 93. PLAINTIFF was not paid reporting time wages in accordance with California law,
28 including but not limited to the applicable IWC Wage Order. For example, based on information

1 and belief, at times, PLAINTIFF and/or other Aggrieved Employees reported to work for a
2 scheduled shift but were sent home and/or were not put to work and were not paid all owed reporting
3 time pay wages in accordance with California law.

4 94. Based on information and belief, DEFENDANTS have a policy and practice of
5 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
6 including but not limited to, the applicable IWC Wage Order 4-2001, Section 5. DEFENDANTS'
7 failure to pay all reporting time wages to PLAINTIFF and Aggrieved Employees violated and
8 continues to violate the applicable Wage Order, and the California Labor Code, including but not
9 limited to section 1198.

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

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

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

1 compensation into the sick leave pay rate calculation.

2 98. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
3 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
4 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
5 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
6 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
7 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
8 used sick leave and the balance of paid sick leave.

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

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

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

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

1 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
2 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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

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

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

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

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

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

26 108. **Violation of Labor Code section 351 and 353.** Labor Code Section 351 prohibits
27 employers and their agents from sharing in or keeping any portion of a gratuity left for or given to
28 one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions

1 from gratuities, or from using gratuities as direct or indirect credits against an employee's
2 wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities
3 received.

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

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

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

22 112. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
23 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
24 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
25 failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of
26 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

27 113. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
28 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that

1 were due and owing upon termination or resignation. Based on information and belief,
2 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
3 requirements of Labor Code sections 201-202.

4 114. Upon separation of employment, Aggrieved Employees' final paychecks were not
5 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
6 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
7 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
8 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
9 accrued rates.

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

18 116. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

19 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

20 117. Based on information and belief, DEFENDANTS required Aggrieved Employees to
21 agree in writing to unlawful conditions of employment including but not limited to, unlawful non-
22 solicitation/non-compete agreements, procedurally and/or substantively unconscionable
23 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
24 waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or
25 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment
26 in violation of Labor Code section 432.5.

27 118. Based on information and belief, DEFENDANTS ordered unlawful financial credit
28 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved

1 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
2 employment, in violation of California and Federal law, which results in a further violation of Labor
3 Code section 432.5.

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

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

23 121. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
24 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
25 section 432.5.

26 122. Based on further information and belief, DEFENDANTS also required Aggrieved
27 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
28 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA

1 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
2 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

3 123. Based on further information and belief, DEFENDANTS knew that requiring
4 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
5 condition of obtaining and/or holding employment was unlawful.

6 124. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
7 condition of employment, DEFENDANTS violated Labor Code section 432.5.

8 Unlawful Inquires into Criminal History

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

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

18 Unlawful PAGA Waiver

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

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

28 129. Moreover, the California Supreme Court has ruled that a court cannot compel

1 arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an
2 individual PAGA claim. *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 ("There is
3 no individual component to a PAGA action because 'every PAGA action ... is a representative
4 action on behalf of the state.'")

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

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

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

19 132. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

20 **Failure to Keep Accurate Records**

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

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

135. DEFENDANTS' failure to keep "accurate and complete" payroll records for

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

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

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

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

22 138. Personnel Records. In addition to their right to time and pay records, employees, and
23 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
24 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code

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

1 section 432 further specifies that employers must furnish copies of all employment records bearing
2 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
3 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days
4 from the date the employer receives a written request." An employer's failure to comply within this
5 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
6 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

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

11 **Meal Period Violations**

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

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

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

28 143. Employers must pay employees an additional hour of wages at the employees'

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

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

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

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

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

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

28 149. These unlawful meal period policies and practices result in violations of Labor Code

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

5 **Rest Period Violations**

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

20 151. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
21 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
22 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
23 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
24 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
25 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
26 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
27 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
28 “onus is on the employer to clearly communicate the authorization and permission [to take rest

1 periods] to its employees.”).

2 152. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
3 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
4 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
5 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
6 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
7 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

21 156. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
22 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
23 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

24 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

15 **Minimum and Overtime Wage Violations**

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

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

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

8 164. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
9 Aggrieved Employees for all hours worked.

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

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

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

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

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

3 **Failure to Provide Written Commission Agreements**

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

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

12 **Violation of Labor Code Section 226.2.**

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

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

1 226.2.

2 **Statutory Wage Violations**

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

14 **Refusal to Make Payment**

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

23 **Standard Conditions of Labor Violations**

24 175. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
25 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,

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

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

7 **Business Expense Violations**

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

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

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

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

28 180. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with

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

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

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

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

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

18 **Wage Statement Violations**

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

28 186. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees

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

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

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

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

1 190. Based on information and belief, as to Aggrieved Employees compensated on a
2 piece-rate basis, DEFENDANTS failed, and continue to fail to issue accurate wage statements by
3 not documenting the total hours of compensable rest and/or recovery periods and/or for other non-
4 productive time, the rates of compensation for these hours, and the gross wages paid for these hours,
5 in violation of, including but not limited to California Labor Code section 226(a) and/or 226.2

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

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

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

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

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

21 196. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
22 Aggrieved Employees with accurate, itemized wage statements.

23 197. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
24 Employees have suffered injury. The absence of accurate information on their wage statements has
25 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
26 mathematical computations to determine the amount of wages owed, and will cause difficulty and
27 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
28 submission of inaccurate information about wages and amounts deducted from wages to state and

1 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
2 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
3 and pay records than if DEFENDANT had complied with its legal obligations.

4 198. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
5 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
6 during which the statute provisions were violated. ⁴

7 **Unlawful Deductions**

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

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

20 **Reporting Time Pay Violations**

21 201. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

1 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
2 minimum wage.

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

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

14 **Violation of California Day of Rest Law**

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

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

25 **Seating Violations**

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **Sick Leave Violations**

25 217. DEFENDANTS violated California's paid sick leave laws including, Labor Code
26 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
27 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
28 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to

1 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
2 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
3 compensation into the sick leave pay rate calculation.

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

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

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

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

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

23 223. On information and belief, PLAINTIFF alleges that all of these practices were
24 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

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

20 **Untimely Payment of Final Wages**

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

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

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

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

12 231. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
13 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
14 256.

15 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

26 233. The California Labor Code places certain procedural and substantive limits on an
27 employers’ ability to conduct employee background checks and on how employers can use the
28 information they obtain through those background checks. Labor Code section 1024.5 states that

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

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

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

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

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

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

27 Unlawful Inquires into Criminal History

28 239. Labor Code section 432.7 prohibits an employer from asking applicants about past

1 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
2 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
3 convictions on its employment application, in violation of California law.

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

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

14 Unlawful PAGA Waiver

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

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

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

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

6 246. Under the provisions of PAGA and the above mentioned Labor Code sections,
7 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.2,
8 226.7, 245-248.6, 256, 351, 353, 432, 432.5, 432.7, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5,
9 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2751, 2802, 2810.5 and all applicable Wage
10 Orders as well as all interpretations of these laws by California Courts and administrative bodies, as
11 well as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
12 penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: July 17, 2023

CROSNER LEGAL, PC

By: 
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Brandon Brouillette, Esq.
Attorneys for Plaintiff
JOSE ROMO