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7 Individually and on behalf of the State of California,
8 and others similarly situated and aggrieved

Assigned for All Purposes
Judge Lon Hurwitz
Dept. CX103

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ORANGE COUNTY**

12 RICARDO RAMIREZ, individually and on
behalf of the State of California, and others
similarly situated and aggrieved,

13 Plaintiff,

14
15 v.

16 INGARDIA BROS. PRODUCE, INC., a
17 California Corporation; and DOES 1-100,
inclusive,

18 Defendants.

Case No.: 30-2023-01336578-CU-OE-CXC

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

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

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title
26 of warehouse worker, warehouse associate, order puller, pre loader, and/or similar job title(s) and/or
27 position(s) from on or around May 17, 2021 through on or around August 12, 2022. PLAINTIFF
28 worked in the avocado and/or dairy departments.

6. Defendant INGARDIA BROS. PRODUCE, INC., is a California Corporation that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

7. DEFENDANTS own, operate and/or otherwise manage a wholesale food supplier and/or food manufacturing business headquartered in Orange County, California, and serving customers throughout California, including but not limited to, in Orange County, San Diego County, Riverside County, San Bernardino County and Los Angeles County.

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

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

JOINT LIABILITY

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

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

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

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

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

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

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

26 15. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
27 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
28 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved

1 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
2 PLAINTIFF seeks relief in this Complaint.

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

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

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

15 **PAGA ALLEGATIONS**

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

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

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

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

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

8 21. PLAINTIFF, on May 4, 2023, through counsel, gave written notice by online filing
9 with the California Labor and Workforce Development Agency (“LWDA”) informing it and
10 Division of Occupational Safety that DEFENDANTS failed to comply with California’s labor laws
11 with regard to the allegations alleged in this Complaint (“PAGA Notice”).

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

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

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

24 **FACTUAL ALLEGATIONS**

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

1 26. PLAINTIFF worked for DEFENDANTS as a warehouse worker, warehouse
2 associate, order puller, pre loader, and/or similar job title(s) and/or position(s) from on or around
3 May 17, 2021 through on or around August 12, 2022. PLAINTIFF worked in the avocado and/or
4 dairy departments. COMPLAINANT regularly worked at least eight (8) to ten (10) hours per day,
5 at least six (6) days per week.

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

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

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

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

1 Employees to undergo security screenings before and/or after a scheduled shift and/or before or after
2 clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.

3 31. Based on information and belief, DEFENDANTS required Aggrieved Employees to
4 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
5 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.
6 Based on information and belief, Aggrieved Employees were required to complete other off-the-
7 clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal
8 periods, resulting in off-the-clock work and the underpayment of minimum and overtime wages
9 owed to Aggrieved Employees.

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

15 33. PLAINTIFF and other Aggrieved Employees were required to perform other off-the-
16 clock work for which they were not compensated. For example, based on information and belief,
17 at times, DEFENDANTS electronic/biometric employee time-keeping system malfunctioned such
18 that Aggrieved Employees were required to either reinitiate and/or otherwise troubleshoot the
19 system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts
20 and/or clock back in from meal periods and/or rest periods, resulting in off-the-clock work and the
21 underpayment of wages owed to Aggrieved Employees. Based on information and belief,
22 Aggrieved Employees experienced the same issues when clocking out for shifts and/or back in for
23 meal periods and/or rest periods. This time spent under DEFENDANTS' control was not recorded
24 and not compensated and resulted in unpaid minimum wages owed to Aggrieved Employees.

25 34. Furthermore, based on information and belief, at times, DEFENDANTS required
26 Aggrieved Employees to clock out for rest periods that were on duty, cut short, and/or worked
27 through completely, resulting in rest period law violations and the underpayment of wages owed to
28 Aggrieved Employees.

1 35. Based on information and belief, Aggrieved Employees were also pressured to
2 complete at least some of their work tasks off-the-clock in order to meet DEFENDANTS' goals and
3 expectations. On information and belief, Aggrieved Employees were also required to complete off-
4 the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they
5 received to their personal phones and were required to respond to, including but not limited to,
6 communications from supervisors regarding scheduling and/or other work tasks, resulting in the
7 underpayment of wages owed to Aggrieved Employees.

8 36. Moreover, based on information and belief, at times, DEFENDANTS paid
9 Aggrieved Employees on a strictly piece-rate basis (e.g., per unit produced, pulled, packed, and/or
10 delivered), at least during some pay periods, during the relevant time period. However, based on
11 information and belief, DEFENDANTS failed to separately compensate Aggrieved Employees for
12 all non-piece rate related activities/all non-productive time, including but not limited to, all rest
13 breaks and/or time spent preparing/setting up for tasks, waiting between jobs and tasks and/or other
14 waiting time, and/or performing work duties that otherwise fall outside of the piece-rate pay criteria.
15 DEFENDANTS failure to separately compensate Aggrieved Employees for their rest periods and/or
16 other non-productive time and/or failure to compensate them at the correct rates for all non-
17 productive time including rest periods resulted in the failure to pay Aggrieved Employees for all
18 hours worked and violations of California wage and hour laws, including but not limited to, Labor
19 Code sections 226.2 and/or 1197. Based on information and belief, DEFENDANTS further failed
20 to include this information on these employees' wage statements required by Labor Code section
21 226.2.

22 37. Moreover, based on information and belief, DEFENDANTS failed to pay
23 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split
24 shifts during the relevant period. For example, based on information and belief, at times,
25 DEFENDANTS required PLAINTIFF and/or other Aggrieved Employees to work two separate
26 shifts in the same day. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF
27 and/or other Aggrieved Employees split shift compensation whenever PLAINTIFF and/or other
28 Aggrieved Employees work schedules were interrupted by non-paid non-working periods

1 established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See
2 section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay
3 at the minimum wage shall be paid in addition to the minimum wage for that workday...). See, also,
4 Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the
5 minimum wage shall be paid in addition to the minimum wage for that workday, except when the
6 employee resides at the place of employment).

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

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

20 40. Based in information and belief, DEFENDANTS implemented a time-rounding
21 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
22 compensable time because the time-rounding system implemented by DEFENDANTS would
23 almost always, if not always, result in understating actual compensable work time. For example,
24 DEFENDANTS' wage statements for PLAINTIFF evidence DEFENDANTS rounded
25 PLAINTIFF's hours worked to at least the nearest quarter, half, and/or whole hour, resulting in
26 DEFENDANTS' failure to compensate PLAINTIFF for all work time. For example,
27 DEFENDANTS' wage statements for PLAINTIFF for, including but not limited to the following
28 pay periods, demonstrate rounding of PLAINTIFF's hours worked to at least the nearest quarter,

1 half and/or whole hour: pay period beginning on June 19, 2022, and ending on June 25, 2022; pay
2 period beginning on June 26, 2022, and ending on July 2, 2022; pay period beginning on July 3,
3 2022, and ending on July 9, 2022; pay period beginning on July 10, 2022, and ending on July 16,
4 2022; pay period beginning on July 17, 2022, and ending on July 23, 2022; and pay period beginning
5 on July 24, 2022, and ending on July 30, 2022. Based on information and belief, DEFENDANTS
6 also rounded, to at least the nearest quarter, half and/or whole hour, the hours worked of other
7 Aggrieved Employees during most if not all pay periods during the relevant period, resulting in
8 DEFENDANTS' failure to pay Aggrieved Employees for all time worked.

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

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

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

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

1 45. Based on information and belief, DEFENDANTS sometimes paid Aggrieved
2 Employees multiple rates of base pay in one workweek but failed to incorporate all multiple rates
3 of base pay into the regular rate of pay for purposes of calculating the owed overtime rate. For
4 example, based on information and belief, at times, Aggrieved Employees earned multiple base pay
5 rates during the same workweek, yet, DEFENDANTS failed to incorporate all/both base pay rates
6 into the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the
7 miscalculation and underpayment of overtime wages owed to Aggrieved Employees. As such,
8 DEFENDANTS failed to incorporate multiple base rates of pay earned in a workweek by other
9 Aggrieved Employees into the regular rate of pay used to calculate the owed overtime rate(s),
10 resulting in unpaid wages to Aggrieved Employees.

11 46. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
12 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
13 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
14 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
15 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
16 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
17 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
18 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
19 completely. For example, based on information and belief, at times, Aggrieved Employees were
20 required to work through their meal periods and/or had their meal periods interrupted and/or cut
21 short due to lack of coverage, the need to keep up with production deadlines, respond to work-
22 related communications and/or complete other work tasks. Based on information and belief,
23 DEFENDANTS performed an automatic meal period deduction of at least thirty minutes per shift
24 per Aggrieved Employees even though DEFENDANTS had actual and/or constructive knowledge
25 that Aggrieved Employees were frequently required to take shortened and/or interrupted meal
26 periods and/or skip their meal periods completely due to lack of coverage, the need to keep up with
27 production deadlines, respond to work-related communications and/or complete other work tasks.

28 47. Based on information and belief, other Aggrieved Employees were consistently

1 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
2 interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing,
3 the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and
4 expectations.

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

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

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

18 51. Moreover, based on information and belief, Aggrieved Employees who worked shifts
19 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.
20 For example, when PLAINTIFF and/or other Aggrieved Employees worked shifts lasting longer
21 than ten (10) and/or twelve (12) hours, DEFENDANTS only allowed for a single meal period per
22 shift, and that single meal period was often cut short, interrupted, on-duty and/or otherwise
23 noncompliant with California meal period law.

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

28 53. Moreover, based on information and belief, DEFENDANTS failed to keep accurate

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

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

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

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

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

25 58. Based on information and belief, DEFENDANTS did not have a have a compliant
26 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
27 practice. For example, per DEFENDANTS' unlawful rest period policy and practice,
28 DEFENDANTS only allowed for two purported rest periods per shift even on shifts lasting longer

1 than ten (10) and/or fourteen (14) hours, and DEFENDANTS required PLAINTIFF to combine his
2 two purported rest periods into one and tack them onto the end of a purported thirty-minute meal
3 break such that PLAINTIFF was almost always, if not always, denied at least one legally compliant
4 rest period per shift worked. For example, PLAINTIFF was rarely, if ever, afforded a full ten-
5 minute second rest period in the middle of his at least eight-hour work period.

6 59. Moreover, based on information and belief, at times, Aggrieved Employees were
7 unable to take legally compliant rest periods due to lack of coverage, the need to keep up with
8 production deadlines/complete their assigned job duties and/or were unable to take a net ten-minute
9 rest period in a suitable rest area and/or had their purported rest periods restricted to DEFENDANTS'
10 premises.

11 60. Furthermore, based on information and belief, DEFENDANTS performed an
12 automatic deduction of at least thirty-minutes per shift per Aggrieved Employee for two fifteen-
13 minute purported rest periods. For example, based on information and belief, DEFENDANTS
14 required Aggrieved Employees to clock for two purported fifteen minute rest periods per shift even
15 though DEFENDANTS had actual and/or constructive knowledge that Aggrieved Employees were
16 required to take unpaid rest periods that were on duty, cut short, and/or worked through completely,
17 resulting in rest period law violations and the underpayment of wages owed to Aggrieved
18 Employees.

19 61. Moreover, based on information and belief, DEFENDANTS had and has an unlawful
20 rest period policy and practice whereby DEFENDANTS only allowed/allows for two purported rest
21 periods per shift even on shifts lasting longer than ten (10) and/or fourteen (14) hours and those two
22 purported rest periods were/are typically if not always not compliant with California rest period law.
23 For example, when PLAINTIFF and/or other Aggrieved Employees worked shifts lasting longer
24 than ten (10) hours and/or fourteen (14) hours, they were not provided with any version of a third
25 and/or fourth rest period.

26 62. Based on information and belief, any purported rest periods were interrupted, cut
27 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of
28 their job duties, and/or commentary from supervisors pressuring them to skip rest periods

1 completely and/or take non-compliant rest periods.

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

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

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

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

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

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

1 limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises
2 which are not designated or reserved for their rest, such as their personal vehicles.

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

5 70. DEFENDANTS' failure to provide suitable resting facilities to PLAINTIFF and
6 Aggrieved Employees violated and continue to violate the applicable Wage Order, section sections
7 12(B) and/or 13(B) and the California Labor Code, including but not limited to section 1198.

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

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

24 73. Based on information and belief, wage statements issued by DEFENDANTS failed
25 to list all applicable hourly rates in effect during the pay period and the corresponding number of
26 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
27 Code section 226(a)(9). For example, as described herein, based on information and belief,
28 DEFENDANTS failed to properly blend multiple base rates of pay earned during the workweek

1 and/or failed to incorporate all forms of non-discretionary compensation earned during the pay
2 period, including but not limited to, non-discretionary bonus/incentive pay and/or shift differential
3 pay and/or multiple base rates of pay and/or other non-discretionary compensation into the overtime
4 pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of
5 overtime worked by Aggrieved Employees.

6 74. Based on information and belief, DEFENDANTS issued wage statements that failed
7 to list the number of piece rate units completed/earned during the pay period and the applicable rate
8 of pay for each piece rate unit.

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

13 76. Based on information and belief, wage statements issued by DEFENDANTS failed
14 to list the inclusive dates of the pay period for which the Aggrieved Employees is being paid.

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

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

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

24 80. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
25 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
26 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
27 from Aggrieved Employees paychecks during the relevant period, including but not limited to
28 deducting costs of uniforms and/or other business costs and/or deducting wages for purported

1 overpayments from previous pay periods and/or unlawfully deducting wages for negligently
2 damaged property and/or deducting costs advanced by DEFENDANTS from Aggrieved
3 Employees' final paychecks. Such a practice is in violation of including but not limited to, Labor
4 Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section
5 2699.

6 **81. 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, including but not limited to time records, within the time periods
12 delineated by California labor law. Based on information and belief, DEFENDANTS failed and
13 continues to fail to timely produce complete payroll and personnel records when requested by other
14 Aggrieved Employees. Based on information and belief, DEFENDANTS failed and continue to fail
15 to timely produce complete time, pay, and personnel records when requested by other Aggrieved
16 Employees.

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

25 **83.** DEFENDANTS have failed and continue to fail to keep accurate and complete
26 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
27 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
28 employer control during unpaid meal periods, failure to record the true start and end times of meal

1 periods, shift start times and shift end times, and other off-the-clock work policies and practices
2 described herein.

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

15 85. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
16 Employees who were paid solely on a piece rate basis (e.g. per unit produced, pulled, packed, and/or
17 delivered) separately for the rest periods and nonproductive time, and/or failed to pay them for this
18 time at the correct rates. Based on information and belief, DEFENDANTS further failed to include
19 this information on Aggrieved Employees' wage statements. As such, DEFENDANTS failed to
20 comply with Labor Code section 226.2.

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

27 87. Based on information and belief, DEFENDANTS shifted the costs of doing business
28 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on

1 information and belief DEFENDANTS required Aggrieved Employees to pay for business
2 expenses including but not limited to uniforms/work clothing/work shoes/personal protective/safety
3 gear and the use of Aggrieved Employees' personal mobile phone, internet and/or data usage for
4 work related purposes, including but not limited to, to receive and respond to work related messages
5 and/or phone calls. For example, based on information and belief, Aggrieved Employees were
6 required to receive and respond to work-related calls and/or messages from supervisors and/or other
7 employees regarding scheduling and/or other work tasks but were not reimbursed by
8 DEFENDANTS at all and/or in full for these business expenses.

9 88. Based on information and belief, DEFENDANTS failed to reimburse Aggrieved
10 Employees for expenses associated with having to purchase and/or maintain their own hand tools
11 and/or equipment required to perform their assigned job duties. Based on information and belief,
12 Aggrieved Employees were not reimbursed for the cost of purchasing and/or maintaining work
13 uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

14 89. Based on information and belief, at times, Aggrieved Employees were not
15 reimbursed for the business use of their personal vehicles, including mileage, wear and tear, and
16 cost of fuel when they were required to drive around and/or between job sites, and/or use their
17 personal vehicles in carrying out the duties assigned by DEFENDANTS. As such, DEFENDANTS
18 failed to compensate Aggrieved Employees at the legally mandated Internal Revenue Service (IRS)
19 per mile compensation rates in effect during the relevant period.

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

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

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

11 93. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
12 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
13 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
14 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
15 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
16 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
17 used sick leave and the balance of paid sick leave.

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

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

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

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

12 98. **Seating Violations.** Per all applicable IWC Wage Orders, employees shall be
13 provided with suitable seats when the nature of the work reasonably permits the use of seats and
14 when they are not actively engaged in the work duties that would not permit them to be seated.

15 99. All applicable IWC Wage Orders provide:

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

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

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

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

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

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

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

18 105. Upon separation of employment, Aggrieved Employees' final paychecks were not
19 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
20 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
21 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
22 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
23 accrued rates.

24 106. Based on further information and belief, DEFENDANTS failed to timely provide all
25 owed wages immediately upon discharge of employment. Based in information and belief, at times,
26 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
27 Aggrieved Employees would not be called in for work for longer than a single pay period due to
28 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances

1 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
2 the end of such periods of employment, in violation of including but not limited to Labor Code
3 section 201-202.

4 107. **Unlawful Inquiries into Salary History**. Labor code section 432.3 provides in part
5 “(b) An employer shall not, orally or in writing, personally or through an agent, seek salary history
6 information, including compensation and benefits, about an applicant for employment.” Based on
7 information and belief, DEFENDANTS have a policy and/or practice of unlawfully asking
8 Aggrieved Employees to reveal their salary history when applying for employment with
9 DEFENDANTS. For example, when PLAINTIFF applied for employment with DEFENDANTS,
10 PLAINTIFF was required to fill out an application that requested, among other things, the following
11 information: Name and address of former employer, length of former employment relationship, and
12 the “starting” and “ending” “hourly rate/salary/pay” of the former employment relationship in
13 violation of Labor Code section 432.3.

14 108. Moreover, by requiring Aggrieved Employees to disclose prior salary information in
15 a written application for employment, DEFENDANTS violated Labor Code section 432.5 by
16 requiring Aggrieved Employees to agree in writing to disclose their salary history as a condition of
17 obtaining employment with DEFENDANTS, in violation of California law.

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

19 **Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.**

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

26 111. Based on information and belief, DEFENDANTS ordered unlawful financial credit
27 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
28 Employees to provide ongoing written consent to the unlawful credit checks as a condition of

1 employment, in violation of California and Federal law, which results in a further violation of Labor
2 Code section 432.5.

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

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

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

25 115. Based on further information and belief, DEFENDANTS also required Aggrieved
26 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
27 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
28 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by

1 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

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

7 Unlawful Inquires into Criminal History

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

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

17 Unlawful PAGA Waiver

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

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

27 122. Moreover, the California Supreme Court has ruled that a court cannot compel
28 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an

1 individual PAGA claim. *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is
2 no individual component to a PAGA action because ‘every PAGA action ... is a representative
3 action on behalf of the state.’”)

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

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

19 125. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
20 engaged in these same herein described unlawful practices, which led to violations of the California
21 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
22 unlawful practices to all of its employees that it applied to PLAINTIFF.

23 **FIRST CAUSE OF ACTION**
24 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
25 **2698, ET SEQ.**
26 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
27 **Defendants)**

28 126. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

Failure to Keep Accurate Records

127. California Labor Code § 1174 requires employers to keep “accurate and complete”

1 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
2 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
3 times during which all owed meal periods were provided each day.

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

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

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

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

22 131. Section (b) of Labor Code section 226 further requires employers to "afford current
23 and former employees the right to inspect or receive a copy of records pertaining to their
24 employment upon reasonable request to the employer." Section (c) of Labor Code section 226

25 ¹ 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 provides that, “an employer who receives a written or oral request to inspect or receive a copy of
2 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
3 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
4 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
5 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
6 the employer. Lab. Code section 226(f).

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

16 133. Based on information and belief, DEFENDANTS fail to timely produce or make
17 available Aggrieved Employees’ personnel records and/or payroll records when requested pursuant
18 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
19 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

20 **Meal Period Violations**

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

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

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

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

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

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

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

28 141. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had

1 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
2 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
3 violation of California's meal period laws.

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

9 143. These unlawful meal period policies and practices result in violations of Labor Code
10 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
11 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
12 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
13 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

14 **Rest Period Violations**

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

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

11 146. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
12 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
13 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
14 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
15 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
16 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

24 149. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
25 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
26 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
27 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
28 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into

1 the regular rate of compensation for purposes of determining the owed rest period premium.

2 150. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
3 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
4 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

5 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

24 **Minimum and Overtime Wage Violations**

25 155. California law provides that employees in California must be paid for all hours
26 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
27 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
28 The minimum wage standard applies to each hour employees worked for which they were not paid.

1 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
2 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
3 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

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

17 158. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
18 Aggrieved Employees for all hours worked.

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

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

1 161. Based on information and belief, DEFENDANTS further violated California's
2 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
3 limited to, non-discretionary bonus compensation, shift differentials, multiple base rates of pay,
4 and/or other non-discretionary compensation into the regular rate of pay used to calculate the
5 overtime rate of pay. Failing to include non-discretionary compensation into the regular rate of pay
6 resulted in a miscalculation of the overtime wage rate, resulting in the underpayment of overtime
7 wages owed to PLAINTIFF and other Aggrieved Employees.

8 162. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
9 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
10 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
11 Wage Orders, section 20.

12 **Violation of Labor Code Section 226.2**

13 163. 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.

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

1 **Statutory Wage Violations**

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

13 **Refusal to Make Payment**

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

22 **Standard Conditions of Labor Violations**

23 167. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
24 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
25 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
26 _____

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

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

6 **Business Expense Violations**

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

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

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

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

27 172. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
28 full reimbursement for all reasonable expenses associated with carrying out their duties required

1 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
2 expenses in violation of Labor Code section 2802.

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

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

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

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

17 **Wage Statement Violations**

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

27 178. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
28 with meal and rest periods that complied with Labor Code section 226.7, the wage statements

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

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

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

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

28 182. Based on information and belief, DEFENDANTS issued wage statements that failed

1 to list the number of piece rate units completed/earned during the pay period and the applicable rate
2 of pay for each piece rate unit.

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

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

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

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

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

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

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

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

4 **Unlawful Deductions**

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

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

17 **Seating Violations**

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

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

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

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

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

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

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

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

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

21 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

26 207. Labor Code § 248.2 provides that all employers with 26 or more employees are
27 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
28 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.

1 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
2 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
3 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
4 Labor Code section 248.6.

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

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

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

19 **Untimely Payment of Final Wages**

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

27 211. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
28 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty

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

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

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

14 **Unlawful Inquiries into Salary History**

15 214. Labor code section 432.3 provides in part “(b) An employer shall not, orally or in
16 writing, personally or through an agent, seek salary history information, including compensation
17 and benefits, about an applicant for employment.” Based on information and belief, DEFENDANTS
18 have a policy and/or practice of unlawfully asking Aggrieved Employees to reveal their salary
19 history when applying for employment with DEFENDANTS. For example, based on information
20 and belief when Aggrieved Employees applied for employment, DEFENDANTS required them to
21 fill out an application that requested, among other things, the hourly rate and/or salary of the former
22 employment relationship in violation of Labor Code section 432.3.

23 215. Moreover, by requiring Aggrieved Employees to disclose prior salary information in
24 a written application for employment, DEFENDANTS violated Labor Code section 432.5 by
25 requiring Aggrieved Employees to agree in writing to disclose their salary history as a condition of
26 obtaining employment with DEFENDANTS, in violation of California law.

27 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

28 216. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall

1 require any employee or applicant for employment to agree, in writing, to any term or condition
2 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
3 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
4 conditions of employment including but not limited to unlawful non-solicitation/non-compete
5 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
6 waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or
7 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment
8 in violation of Labor Code section 432.5.

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

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

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

28 220. Based on further information and belief, DEFENDANTS required Aggrieved

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

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

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

10 Unlawful Inquires into Criminal History

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

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

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

25 Unlawful PAGA Waiver

26 226. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring
27 PLAINTIFF and other Aggrieved Employees to agree in writing to other unlawful agreements,
28 including but not limited to, an unlawful waiver of PAGA and/or representative actions as a

1 condition of employment.

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

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

13 229. Upon information and belief, DEFENDANTS required Aggrieved Employees to
14 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
15 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS
16 required written agreement to an unlawful provision as a condition of employment which is a
17 violation of labor code section 432.5.

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

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

22 231. (a) Every employer shall furnish employment and a place of employment that is safe
23 and healthful for the employees therein...

24 232. Labor Code section 6401 provides as follows:

25 233. Every employer shall furnish and use safety devices and safeguards, and shall adopt
26 and use practices, means, methods, operations, and processes which are reasonably adequate to
27 render such employment and place of employment safe and healthful. Every employer shall do every
28 other thing reasonably necessary to protect the life, safety, and health of employees.

1 234. Labor Code section 6402 prohibits the following:

2 235. No employer shall require, or permit any employee to go or be in any employment
3 or place of employment which is not safe and healthful.

4 236. Similarly, Labor Code section 6404 provides as follows:

5 237. No employer shall occupy or maintain any place of employment that is not safe and
6 healthful.

7 238. In addition to the above, Labor Code section 6403 requires that employees provide
8 safety devices to its employees. Labor Code section 6403 states:

9 239. No employer shall fail or neglect to do any of the following:

10 240. (a) To provide and use safety devices and safeguards reasonably adequate to render
11 the employment and place of employment safe.

12 241. (b) To adopt and use methods and processes reasonably adequate to render the
13 employment and place of employment safe.

14 242. (c) To do every other thing reasonably necessary to protect the life, safety, and health
15 of employees.

16 243. Similarly, Labor Code section 6406(d) states the following:

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

19 245. Finally, Labor Code section 6407 provides:

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

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

26 248. At all relevant times, DEFENDANTS employed PLAINTIFF and Aggrieved
27 Employees subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times,
28 DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and

1 safeguards and of failing to adopt and use practices, means, methods, operations, and/or processes
2 which are reasonably adequate to render such employment and place of employment safe and
3 healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times
4 DEFENDANTS had and have a policy and practice of requiring or permitting employees to go or
5 be in in any employment or place of employment which is not safe and healthful, pursuant to Labor
6 Code section 6402. At all relevant times, DEFENDANTS had and have a policy and practice of
7 failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render
8 the employment and place of employment safe; adopt and use methods and processes reasonably
9 adequate to render the employment and place of employment safe; and do every other thing
10 reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code
11 section 6403.

12 249. PLAINTIFF is informed and believes and thereon alleges that these failures include,
13 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or
14 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to
15 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
16 conditions between PLAINTIFF and/or other Aggrieved Employees.

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

25 251. At all relevant times, DEFENDANTS had and have a policy and practice of failing
26 within one business day after DEFENDANTS or a representative of DEFENDANTS received notice
27 of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other Aggrieved
28 Employees and/or their exclusive representatives, who were on the premises at the same worksite

1 as a qualifying individual who was within the infectious period that they may have been exposed to
2 COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and
3 practice of failing within one business day after DEFENDANTS or a representative of EMLOYER
4 received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other Aggrieved
5 Employees who were on the premises at the same worksite as the qualifying individual within the
6 infectious period and the exclusive representative, if any, with information regarding COVID-19-
7 related benefits to which the employee may be entitled under applicable federal, state or local laws,
8 including but not limited to, workers' compensation, and options for exposed employees, including
9 COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or
10 negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the
11 employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and
12 6432.

13 252. At all relevant times, DEFENDANTS had and have a policy and practice of failing
14 within one business day after DEFENDANTS or a representative of DEFENDANTS received a
15 notice of potential exposure to COVID-19 to notify PLAINTIFF and other Aggrieved Employees
16 who were on the premises at the same worksite as the qualifying individual within the infectious
17 period, and the employers of the subcontracted employees who were on the premises at the same
18 worksite as the qualifying individual within the infectious period and the exclusive representative,
19 if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of
20 the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per
21 the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated,
22 without limitation, Labor Code sections 6409.6 and 6432.

23 253. At all relevant times, DEFENDANTS had and have a policy and practice of failing
24 to notify the local public health agency in the jurisdiction of the worksite of the names, number,
25 occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as
26 defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed
27 health care provider; a COVID-19 related order to isolate provided by a public health official; or
28 died due to COVID-19, in the determination of a county public health department or per inclusion

1 in the COVID-19 statistics of a county. As such, DEFENDANTS violated, without limitation, Labor
2 Code sections 6409.6 and 6432.

3 254. PLAINTIFF is informed and believes, and based thereon alleges that
4 DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and
5 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule
6 for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
7 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
8 blowers; and a sufficient number of toilets to be used by each of sex of employee.

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

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

20 257. As such, DEFENDANTS failed to comply with the occupational safety and health
21 standards, failed to do everything reasonably necessary to protect the health and safety of
22 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
23 necessary to maintain a safe and healthful workplace.

24 258. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
25 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
26 is subject to civil penalties.

27 259. Under the provisions of PAGA and the above mentioned Labor Code sections,
28 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.2,

1 226.7, 245-248.6, 256, 432, 432.3, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
2 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, 6432 and
3 all applicable Wage Orders as well as all interpretations of these laws by California Courts and
4 administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS
5 are liable for the following penalties:

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

15 260. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
16 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 11, 2023

CROSNER LEGAL, PC

By: 
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Jamie Serb, Esq.
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RICARDO RAMIREZ