

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

10 Attorneys for Plaintiff JONATHAN WILLIAMS
11 on behalf of the State of California,
12 and others similarly situated and aggrieved

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF LOS ANGELES**

15 JONATHAN WILLIAMS, on behalf of the
16 State of California, and others similarly
17 situated and aggrieved,

18 Plaintiff,

19 v.

20 M.S. AEROSPACE INC., a Delaware
21 Corporation; A.S. AEROSPACE, INC., a
22 California Corporation; and DOES 1-100,
23 inclusive,

24 Defendants.

Electronically FILED by
Superior Court of California,
County of Los Angeles
7/10/2023 9:28 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Tarasyuk, Deputy Clerk

Case No.: **23STCV16038**

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

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

7 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF worked for DEFENDANTS as a hot heading technician and/or similar
26 job title(s) and/or position(s) from in or around September 2022 through on or around November 3,
27 2022.

28 6. DEFENDANTS are a Delaware and/or California corporation that, at all relevant

1 times, were authorized to do business within the State of California and is doing business in the
2 State of California.

3 7. DEFENDANTS own, operate, and/or otherwise manage a manufacturing business,
4 specializing in the manufacturer of aerospace parts, including but not limited to, parts for jet engines,
5 rocket engines, and structural fasteners, among other things. DEFENDANTS own, operate, and/or
6 otherwise manage locations, plants, warehouses and/or facilities in California, including but not
7 limited to, DEFENDANTS' manufacturing facilities located in Sylmar, California.

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

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

24 **JOINT LIABILITY**

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

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

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

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

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

6 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
7 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
8 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
9 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
10 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
11 considered the joint employers of PLAINTIFF and Aggrieved Employees. For example, based on
12 information and belief, wage statements issued to PLAINTIFF by DEFENDANTS identify "MS
13 Aerospace" and/or "MS Aerospace, Inc." as the name of the legal entity that is PLAINTIFF's
14 employer. However, based on information and belief, documents contained in PLAINTIFF's
15 personnel file, including without limitation, privacy agreements and/or data collection agreements
16 and/or other employment-related policy documents and/or agreements identify "A.S. Aerospace"
17 and/or "A.S. Aerospace, Inc." as the name of PLAINTIFF's employer. Moreover, based on
18 information and belief, DEFENDANTS, and each of them, share the same principal place of
19 business and/or same agent for service of process and/or share some of the same attorneys and/or
20 human resources personnel to oversee employment-related matters.

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

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

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

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

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

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

24 **PAGA ALLEGATIONS**

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

28 All current and former non-exempt employees that worked either

1 directly or via a staffing agency for any one or more of the
2 DEFENDANTS at any location in California at any time from one
3 year plus 65 days from the filing of the initial Complaint through the
4 present (“PAGA Period”).

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

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

17 21. PLAINTIFF, on May 3, 2023, through counsel, gave written notice by online filing
18 with the California Labor and Workforce Development Agency (“LWDA”) informing it and
19 Division of Occupational Safety and Health (“Cal OSHA”) that DEFENDANTS failed to comply
20 with California’s labor laws with regard to the allegations alleged in this Complaint (“PAGA
21 Notice”).

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

25 23. The LWDA and/or Division of Occupational Safety and Health did not provide
26 notice of its intention to investigate DEFENDANTS’ violations after expiration of the 65-day
27 waiting time period, or at any time. To the extent any of the alleged violations were curable,
28 DEFENDANTS failed to cure within the time allotted by PAGA. Accordingly, PLAINTIFF has

1 exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently,
2 PLAINTIFF's right to file the instant lawsuit against DEFENDANTS has duly accrued.

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

6 **FACTUAL ALLEGATIONS**

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

11 26. PLAINTIFF worked for DEFENDANTS as a hot heading technician and/or similar
12 job title(s) and/or position(s) from in or around September 2022 through on or around November 3,
13 2022. PLAINTIFF regularly worked at least eight (8) hours per day, at least (5) days per week.

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

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

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

1 30. Based on information and belief, Aggrieved Employees were not paid for all hours
2 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
3 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
4 the clock work policies and/or practices. For example, based on information and belief,
5 DEFENDANTS required Aggrieved Employees to be at their assigned workstations at the start of a
6 scheduled shift, thereby forcing Aggrieved Employees to gather work related equipment and/or
7 safety gear prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in
8 pre-shift off-the-clock work. Based on information and belief, DEFENDANTS required Aggrieved
9 Employees to undergo security screenings before and/or after a scheduled shift and/or before or after
10 clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.

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

18 32. Based on information and belief, DEFENDANTS did not compensate Aggrieved
19 Employees for time spent donning and doffing personal protective equipment, safety equipment
20 and/or uniforms (e.g., safety goggles/glasses and/or face masks) during meal periods, rest periods,
21 before the start of a scheduled shift, and after completing a scheduled shift.

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

1 experienced the same issues when clocking out for shifts and/or back in for meal periods. This time
2 spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid
3 minimum wages owed to Aggrieved Employees.

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

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

28 36. Based in information and belief, DEFENDANTS implemented a time-rounding

1 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
2 compensable time because the time-rounding system implemented by DEFENDANTS would
3 almost always, if not always, result in understating actual compensable work time. For example,
4 based on information and belief, wage statements issued by DEFENDANTS to PLAINTIFF show
5 DEFENDANTS rounded PLAINTIFF's total hours worked to at least the nearest quarter, half and/or
6 whole hour, resulting in the underpayment of minimum wages and overtime wages owed to
7 PLAINTIFF as well as wage statement violations described herein. For example, DEFENDANTS'
8 time records for PLAINTIFF for including but not limited to, October 17, 2022, October 18, 2022,
9 and October 19, 2022, list precisely 8.00 total daily hours worked and/or otherwise demonstrate
10 rounding of PLAINTIFF's total hours worked to at least the nearest half and/or whole hour. Based
11 on information and belief, DEFENDANTS also rounded, to at least the nearest quarter, half and/or
12 whole hour, the total hours worked of other Aggrieved Employees during most if not all pay periods
13 during the relevant period, resulting in the failure to pay Aggrieved Employees for all time work.

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

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

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

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

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

16 42. Additionally, DEFENDANTS also violated California's overtime laws as to those
17 Aggrieved Employees, including PLAINTIFF that were subject to an Alternative Workweek
18 Schedule (AWS).

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

26 44. (C) Election Procedures Election procedures for the adoption
27 and repeal of alternative workweek schedules require the following:

28 (1) Each proposal for an alternative workweek schedule shall be in

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

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

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

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

19 46. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to
20 comply with the above procedures, and thus, failed to properly institute an alternative workweek for
21 the purpose of obtaining a lawful exemption from overtime premiums for its mandated 10-hour/4-
22 day schedule. Based on information and belief, DFENDANTS also failed to report the results to
23 the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the purported
24 election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This
25 conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage
26 Orders. These violations subject employer to civil penalties under Labor Code §§ 558 and 2699,
27 and All Applicable Wage Orders. Each violation of each Labor Code section and Wage Order
28

1 provision results in a separate civil penalty, for each Aggrieved Employee, for each pay period
2 during which the referenced statutes and Wage Order provisions were violated.

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

23 48. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
24 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
25 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
26 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
27 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
28 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their

1 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
2 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
3 completely. For example, based on information and belief, at times, Aggrieved Employees were
4 required to work through their meal periods and/or had their meal periods interrupted and/or cut
5 short due to including but not limited to, lack of coverage, the need to keep up with production
6 deadlines, respond to work-related communications and/or complete other work tasks. Based on
7 information and belief, DEFENDANTS performed an automatic meal period deduction of at least
8 thirty minutes per shift per Aggrieved Employee even though DEFENDANTS had actual and/or
9 constructive knowledge that Aggrieved Employees were at times required to take shortened and/or
10 interrupted meal periods and/or skip their meal periods completely due to lack of coverage, the need
11 to keep up with production deadlines, respond to work-related communications and/or complete
12 other work tasks.

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

18 50. Based on information and belief, DEFENDANTS implemented policies and/or
19 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
20 during unpaid meal periods.

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

25 52. Based on information and belief, despite DEFENDANTS' failure to provide lawful
26 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
27 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
28 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal

1 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
2 Employees did not receive lawful meal periods.

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

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

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

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

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

26 58. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
27 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
28 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the

1 middle of the work period, as required by law.

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

6 60. Based on information and belief, DEFENDANTS did not have a have a compliant
7 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
8 practice. For example, based on information and belief, at times, Aggrieved Employees were unable
9 to take legally compliant rest periods due to lack of coverage, the need to keep up with production
10 deadlines/complete their assigned job duties and/or were unable to take a net ten-minute rest period
11 in a suitable rest area and/or had their purported rest periods restricted to DEFENDANTS' premises.

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

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

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

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

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

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

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

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

19 **68.** Based on information and belief, wage statements issued by DEFENDANTS failed
20 to list all applicable hourly rates in effect during the pay period and the corresponding number of
21 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
22 Code section 226(a)(9). For example, based on information and belief, DEFENDANTS' wage
23 statements issued to Aggrieved Employees do not provide an accurate overtime rate because instead
24 of multiplying the regular rate of pay by one and one-half, the wage statements provide at least two
25 separate overtime rate categories with each providing an inaccurate overtime rate based on each
26 base rate of pay as opposed to the regular rate of pay. As such, Aggrieved Employees are forced to
27 perform extensive calculation using outside resources to determine what their pay rate was for each
28 corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011).

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

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

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

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

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

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

21 74. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
22 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
23 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
24 from Aggrieved Employees paychecks during the relevant period including but not limited to
25 deducting costs of uniforms and/or other business costs and/or deducting wages for purported
26 overpayments from previous pay periods and/or unlawfully deducting wages for negligently
27 damaged property and/or deducting costs advanced by DEFENDANTS from Aggrieved
28 Employees' final paychecks. Such a practice is in violation of including but not limited to, Labor

1 Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section
2 2699.

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

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

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

27 **78. Unreimbursed Business Expenses.** Based on information and belief,
28 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses

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

5 79. Based on information and belief, DEFENDANTS shifted the costs of doing business
6 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
7 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
8 including but not limited to including but not limited to, uniforms/work clothing/work
9 shoes/personal protective/safety gear and the use of Aggrieved Employees' personal mobile phone,
10 internet and/or data usage for work related purposes, including but not limited to, to receive and
11 respond to work related messages and/or phone calls. For example, based on information and belief,
12 Aggrieved Employees were required to receive and respond to work-related calls and/or messages
13 from supervisors and/or other Aggrieved Employees regarding scheduling and/or other work tasks
14 but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

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

20 81. Based on information and belief, at times, Aggrieved Employees were not
21 reimbursed for the business use of their personal vehicles, including mileage, wear and tear, and
22 cost of fuel when they were required to drive around and/or between job sites, and/or use their
23 personal vehicles in carrying out the duties assigned by DEFENDANTS.

24 82. As such, DEFENDANTS failed to compensate Aggrieved Employees at the legally
25 mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant
26 period. As explained above, based on information and belief, Aggrieved Employees were not
27 reimbursed for the cost of using their personal phone for work related purposes and/or the cost of
28 purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety

1 gear.

2 83. Based on information and belief, DEFENDANTS regularly failed to reimburse and
3 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
4 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
5 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
6 assigned by DEFENDANTS.

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

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

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

28 87. Based on information and belief, throughout the relevant time period,

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

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

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

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

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

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

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

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

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

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

12 95. Moreover, based on information and belief, the nature of the work reasonably
13 permitted the use of seats for at least part of the time that Aggrieved Employees were working. For
14 example, at times, PLAINTIFF's job required him to use a table at which a chair of suitable height
15 could have been provided for his use during the performance of his job duties but was not. Instead,
16 DEFENDANTS failed to provide PLAINTIFF with any seating at all and/or failed to provide
17 suitable seating by either failing to provide a chair for PLAINTIFF at all and/or providing an
18 unsuitable chair that was too low to the ground such that PLAINTIFF was required to perform his
19 job crouched at an odd angle and/or was required to stand over his work space without any seating
20 for the entirety of his shifts.

21 96. Lastly, there were periods of time when Aggrieved Employees were not engaged in
22 active duties of their employment, yet there were no suitable seats in reasonable proximity to the
23 work area and use of seats would not interfere with the performance of their duties.

24 97. Aggrieved Employees worked in various positions. The nature of PLAINTIFF's and
25 other Aggrieved Employees work reasonably permitted the use of seats. For example, at times,
26 PLAINTIFF's job required him to use a table at which a chair of suitable height could have been
27 provided for his use during the performance of his job duties but was not. Instead, DEFENDANTS
28 failed to provide any seating at all and/or failed to provide suitable seating by either failing to

1 provide a chair for PLAINTIFF at all and/or providing an unsuitable chair that was too low to the
2 ground such that PLAINTIFF was required to perform his job crouched at an odd angle and/or was
3 required to stand over his work space without any seating for the entirety of his shifts. However,
4 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
5 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
6 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
7 269.

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

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

20 **100.** Upon separation of employment, Aggrieved Employees' final paychecks were not
21 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
22 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
23 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
24 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
25 accrued rates. For example, upon termination of PLAINTIFF's employment, DEFENDANTS did
26 not furnish PLAINTIFF with his final paycheck for at least one (1) to two (2) weeks, and his late
27 final paycheck was devoid of all wages owed, including but not limited to, all owed minimum
28 wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off

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

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

12 102. **Failure to Provide Suitable Resting Facilities:** Per section 13 of all applicable IWC
13 Wage Orders, including but not limited to Wage Order 1, employees shall be provided with suitable
14 resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be
15 provided in an area separate from the toilet rooms and shall be available to employees during work
16 hours."

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

26 104. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities
27 during their hours of work, particularly during meal and/or rest periods.

28 105. DEFENDANTS' failure to provide suitable resting facilities to Aggrieved

1 Employees violated and continue to violate the applicable Wage Order, section 13(B) and the
2 California Labor Code, including but not limited to section 1198.

3 106. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

4 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

5 107. Based on information and belief, DEFENDANTS required Aggrieved Employees to
6 agree in writing to unlawful conditions of employment including but not limited to, unlawful non-
7 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements,
8 unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law
9 provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining
10 and/or continuing employment in violation of, including but not limited to, Labor Code section
11 432.5.

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

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

26 110. Based on information and belief, DEFENDANTS required Aggrieved Employees to
27 agree in writing to a background check which failed to abide by the requirements set forth in CA
28 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by

1 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
2 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
3 the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,
4 failing to provide a way by which the individual could request a copy of the report, failing to disclose
5 the name, address, and telephone number of the third party preparing the report, and failing to
6 properly obtain authorization or consent to such a background check, and thus was an unlawful
7 background check.

8 111. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
9 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
10 section 432.5.

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

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

19 114. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
20 condition of employment, DEFENDANTS violated Labor Code section 432.5.

21 Unlawful Inquires into Criminal History

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

26 116. Upon information and belief, DEFENDANTS, in violation of California law,
27 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
28 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of

1 employment and/or otherwise impermissibly inquired into criminal history on its employment
2 application in violation of California law, and in violation of Labor code section 432.5.

3 Unlawful PAGA Waiver

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

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

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

18 120. Upon information and belief, DEFENDANTS required some Aggrieved Employees
19 to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
20 requiring some Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver,
21 DEFENDANTS required written agreement to an unlawful provision as a condition of employment
22 which is a violation of labor code section 432.5.

23 121. **Failure to Provide a Safe and Healthful Workplace.** During the PAGA Period,
24 DEFENDANTS have had a policy and practice of failing, within one business day after
25 DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to
26 COVID-19, to notify PLAINTIFF and other Aggrieved Employees who were on the premises at the
27 same worksite as the qualifying individual within the infectious period, and the employers of
28 subcontracted employees who were on the premises at the same worksite as the qualifying individual

1 within the infectious period and the exclusive representative, if any, of the cleaning and disinfection
2 plan that the employer is implementing per the guidelines of the COVID 10 prevention program per
3 the Cal-OSHA COVID-19 Emergency Temporary Standards, among other things in violation of
4 Labor Code sections 6409.6 and/or 6432.

5 122. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
6 engaged in these same herein described unlawful practices, which led to violations of the California
7 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
8 unlawful practices to all of its employees that it applied to PLAINTIFF.

9 **FIRST CAUSE OF ACTION**
10 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
11 **2698, *ET SEQ.***
12 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
13 **Defendants)**

14 123. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

15 **Failure to Keep Accurate Records**

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

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

25 126. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
26 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
27 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
28 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay

1 period during which the referenced statutes and Wage Order provisions were violated.¹

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

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

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

18 129. Personnel Records. In addition to their right to time and pay records, employees, and
19 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
20 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
21 section 432 further specifies that employers must furnish copies of all employment records bearing
22 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
23 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days
24 from the date the employer receives a written request." An employer's failure to comply within this

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 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
2 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

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

7 **Meal Period Violations**

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

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

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

24 134. Employers must pay employees an additional hour of wages at the employees'
25 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
26 meal period, first meal period provided after five (5) hours, second meal period provided after 10
27 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to
28 provide an employee a meal period in accordance with the applicable provision of this Order, the

1 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
2 for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

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

9 136. Based on information and belief, DEFENDANTS had and continue to have a policy
10 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
11 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
12 Aggrieved Employees did not receive compliant meal periods.

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

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

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

24 140. These unlawful meal period policies and practices result in violations of Labor Code
25 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
26 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
27 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
28 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

1 **Rest Period Violations**

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

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

26 143. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
27 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
28 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject

1 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
2 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
3 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

17 147. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
18 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
19 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

20 **Minimum and Overtime Wage Violations**

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

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

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

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

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

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

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

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

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

4 155. Based on information and belief, DEFENDANTS failed to properly institute an AWS
5 and/or failed to comply and/or pay all owed overtime wages in accordance with the AWS as alleged
6 above.

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

11 **Statutory Wage Violations**

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

23 **Refusal to Make Payment**

24 158. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
25 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
26 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
27 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
28 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*

1 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
2 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
3 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

4 **Standard Conditions of Labor Violations**

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

13 **Business Expense Violations**

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

20 161. Among other things, under California law, when employees must use their personal
21 cellphones for work-related purposes, the employer must reimburse them for a reasonable
22 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228
23 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
24 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
25 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile

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 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
2 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

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

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

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

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

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

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

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

27 **Wage Statement Violations**

28 169. California law requires every employer semi-monthly or at the time of each payment

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

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

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

27 172. As explained above, wage statements issued by DEFENDANTS failed to list the
28 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,

1 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
2 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
3 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
4 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
5 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

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

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

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

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

25 179. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
26 Aggrieved Employees with accurate, itemized wage statements.

27 180. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
28 Employees have suffered injury. The absence of accurate information on their wage statements has

1 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
2 mathematical computations to determine the amount of wages owed, and will cause difficulty and
3 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
4 submission of inaccurate information about wages and amounts deducted from wages to state and
5 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
6 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
7 and pay records than if DEFENDANT had complied with its legal obligations.

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

11 **Unlawful Deductions**

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

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

24 **Seating Violations**

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

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

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

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

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

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

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

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

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

28 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

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

19 200. Based on information and belief, DEFENDANTS had and continue to have a
20 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
21 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
22 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
23 discretionary compensation, including but not limited to, shift differentials) to Aggrieved
24 Employees upon separation of employment, in violation of California law, including but not limited
25 to, Labor Code section 227.3.

26 **Untimely Payment of Final Wages**

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

1 payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an
2 employee not having a written contract for a definite period quits his or her employment, his or her
3 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
4 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
5 to his or her wages at the time of quitting.”

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

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

18 204. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
19 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
20 256.

21 205. **Failure to Provide Suitable Resting Facilities:** Per section 13 of all applicable IWC
22 Wage Orders, including but not limited to Wage Order 1, employees shall be provided with suitable
23 resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be
24 provided in an area separate from the toilet rooms and shall be available to employees during work
25 hours.”

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

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

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

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

12 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

1 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
2 background check, including but not limited to identifying an appropriate reason for the background
3 check, a separate consent form with required disclosures and certain formatting requirements,
4 additional forms such as a summary of rights, a way by which to request a copy of the report, as
5 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

23 Unlawful Inquires into Criminal History

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

28 217. Upon information and belief, DEFENDANTS, in violation of California law,

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

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

10 Unlawful PAGA Waiver

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

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

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

26 222. Upon information and belief, DEFENDANTS required PLAINTIFF and other
27 Aggrieved Employees to agree in writing to waive their right to a trial of PAGA claims in violation
28 of California law. By requiring PLAINTIFF and other Aggrieved Employees to agree, in writing,

1 to an unlawful PAGA waiver, DEFENDANTS required written agreement to an unlawful provision
2 as a condition of employment which is a violation of labor code section 432.5.

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

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

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

9 225. Labor Code section 6401 provides as follows:

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

14 227. Labor Code section 6402 prohibits the following:

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

17 229. Similarly, Labor Code section 6404 provides as follows:

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

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

22 232. No employer shall fail or neglect to do any of the following:

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

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

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

1 236. Similarly, Labor Code section 6406(d) states the following:

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

4 238. Finally, Labor Code section 6407 provides:

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

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

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

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

1 conditions between PLAINTIFF and/or other Aggrieved Employees.

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

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

26 245. At all relevant times, DEFENDANTS had and have a policy and practice of failing
27 within one business day after DEFENDANTS or a representative of DEFENDANTS received a
28 notice of potential exposure to COVID-19 to notify PLAINTIFF and other Aggrieved Employees

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

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

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

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

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

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

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

12 252. Under the provisions of PAGA and the above mentioned Labor Code sections,
13 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
14 245-248.6, 256, 432, 432.5, 432.7, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1,
15 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, 6432 and all
16 applicable Wage Orders as well as all interpretations of these laws by California Courts and
17 administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS
18 are liable for the following penalties:

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

28 253. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,

1 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

2 **PRAYER FOR RELIEF**

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

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

12 Dated: July 10, 2023

CROSNER LEGAL, PC

13
14 By: 

15 Zachary M. Crosner, Esq.
16 Jamie Serb, Esq.
17 Attorneys for Plaintiff
18 JONATHAN WILLIAMS
19
20
21
22
23
24
25
26
27
28