

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

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

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 GILBERT GARCIA, on behalf of the State of
15 California, and others similarly situated and
16 aggrieved,

17 Plaintiff,

18 v.

19 KALAVERAS SL INC, a California
20 Corporation; and DOES 1-100, inclusive,

21 Defendants.

Case No.: **23STCV21347**

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

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

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

21 **THE PARTIES**

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

24 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
25 DEFENDANTS as a non-exempt employee with a job title of bartender or a similar title from in or
26 around April 2022 through in or around May 2023. PLAINTIFF worked for DEFENDANTS at
27 DEFENDANTS’ Los Angeles (Silver Lake), California locations(s).
28

1 6. Defendant KALAVERAS SL INC, is a California Corporation that, at all relevant
2 times, was authorized to do business within the State of California and is doing business in the State
3 of California.

4 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
5 facilities, restaurants and/or other location(s) in California, including but not limited to the facilities,
6 restaurants in Los Angeles (Silver Lake), California. DEFENDANTS, through its various s/other
7 locations serves the restaurant, food, and/or food services industry.

8 8. DEFENDANTS own, operate and/or manage and/or staff its employees to work at
9 including but not limited to, the facilities, locations and/or restaurants operating under the name
10 “Kalaveras” and/or “Kalaveras Cantina Urbana” located in including but not limited to the following
11 cities and/or neighborhoods in California: Bellflower, Chino Hills, Long Beach, Marina Del Rey,
12 Montebello, Moreno Valley, Newport Beach, North Hollywood, Orange, Pasadena, Puente Hills,
13 Rancho Cucamonga, Redondo Beach, Riverside, San Bernardino, San Pedro, Santa Monica, Silver
14 Lake, Simi Valley, West Los Angeles, Whittier and other locations.

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

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

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

3 **JOINT LIABILITY**

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

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

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

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

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

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

1 writing the details of their compensation, and the manner in which they were to take meal and rest
2 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
3 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
4 collectively would evaluate their wage rates.

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

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

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

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

22 **PAGA ALLEGATIONS**

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

26 All current and former non-exempt employees that worked either
27 directly or via a staffing agency for any one or more DEFENDANTS
28 at any location in California at any time from one year plus 65 days

1 from the filing of the initial Complaint through the present (“PAGA
2 Period”).

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

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

15 22. PLAINTIFF, on June 29, 2023 through counsel, gave written notice by online filing
16 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
17 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
18 in this Complaint (“PAGA Notice”).

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

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

25 **FACTUAL ALLEGATIONS**

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

1 permitted them to work.

2 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
3 DEFENDANTS as a non-exempt employee with a job title of, bartender or a similar title and/or
4 position from in or around April 2022 through in or around May 2023. PLAINTIFF worked for
5 DEFENDANTS at DEFENDANTS' Los Angeles (Silver Lake), California location(s). PLAINTIFF
6 regularly worked at least five (5) to seven (7) hours per day hours, at least at least two (2) to five (5)
7 days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
8 DEFENDANTS as hours worked. PLAINTIFF also earned tips as part of his compensation.

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

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

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

24 30. Based on information and belief, Aggrieved Employees were not paid for all hours
25 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
26 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
27 the clock work policies and/or practices. For example, based on information and belief,
28 DEFENDANTS would unlawfully edit the clock in and out times for PLAINTIFF's and other

1 Aggrieved Employees' meal periods in order to display at least a thirty minute off-duty meal period
2 during most if not all shifts worked, notwithstanding the fact that DEFENDANTS had actual and/or
3 constructive knowledge that DEFENDANTS had required PLAINTIFF and other Aggrieved
4 Employees' to perform work-related tasks during their meal periods.

5 31. Based on information and belief, at times, Aggrieved Employees were required to
6 complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or
7 messages they received to their phones/mobile devices and were required to respond to, including
8 but not limited to, communications from supervisors regarding scheduling and/or other work tasks,
9 resulting in the underpayment of wages owed to Aggrieved Employees. Based on information and
10 belief, DEFENDANTS did not compensate Aggrieved Employees for time spent donning and
11 doffing personal protective equipment and/or uniforms (e.g., rubber gloves, hairnets, aprons, hats,
12 and/or face masks) during meal periods, before the start of a scheduled shift, and/or after completing
13 a scheduled shift, resulting in the underpayment of wages owed to Aggrieved Employees.
14 Additionally, PLAINTIFF and other Aggrieved Employees were required to perform other off-the-
15 clock work for which they were not compensated. For example, based on information and belief,
16 at times, DEFENDANTS' electronic employee time-keeping system/app malfunctioned such that
17 Aggrieved Employees were required to either reinitiate and/or otherwise troubleshoot the system
18 prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or
19 clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages
20 owed to Aggrieved Employees.

21 32. Based on information and belief, Aggrieved Employees experienced the same issues
22 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
23 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
24 Aggrieved Employees. Moreover, based on information and belief, Aggrieved Employees who
25 opened their work locations were required to first unlock the doors, turn on all the lights in the
26 restaurant/facility and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-
27 the-clock work and the underpayment of wages owed to Aggrieved Employees.

28 33. Based on further information and belief, Aggrieved Employees in charge of closing

1 their location(s) were required to first clock out for their shifts before enabling the alarm, turning
2 off all the lights in the facility and/or locking the doors. This resulted in additional off-the-clock
3 post-shift work that was not compensated, and the underpayment of wages owed to Aggrieved
4 Employees.

5 34. Based on information and belief, at times, DEFENDANTS require/required
6 Aggrieved Employees to travel between DEFENDANTS' restaurants, facilities and/or locations
7 without compensating Aggrieved Employees for the travel time. For example, based on information
8 and belief, due to scheduling issues and/or understaffing, Aggrieved Employees were at times
9 required after working at their scheduled facility location to cover a shift at another of
10 DEFENDANTS' restaurants/facilities/locations but were not compensated for the time spent driving
11 to the second restaurant/facility, resulting in the underpayment of minimum and overtime wages
12 owed to Aggrieved Employees.

13 35. Moreover, based on information and belief, DEFENDANTS failed to pay
14 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split
15 shifts during the relevant period. For example, based on information and belief, at times,
16 DEFENDANTS required PLAINTIFF and/or other Aggrieved Employees to work two separate
17 shifts in the same day. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF
18 and/or other Aggrieved Employees split shift compensation whenever PLAINTIFF's and/or other
19 Aggrieved Employees' work schedules were interrupted by non-paid non-working periods
20 established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See
21 section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay
22 at the minimum wage shall be paid in addition to the minimum wage for that workday...). See, also,
23 Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the
24 minimum wage shall be paid in addition to the minimum wage for that workday, except when the
25 employee resides at the place of employment).

26 36. DEFENDANTS also failed to separately itemize these split shift premium wages on
27 PLAINTIFF's and/or other Aggrieved Employees' wage statements, in violation of Labor Code
28 sections 510, 1194 and all applicable IWC Wage Orders. See,

1 https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on
2 the pay stub provided to the employee, and it should be shown as a separate category such as “Split
3 Shift Premium” and should not be lumped into another category such as wages, bonus, etc.
4 DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF
5 and/or other Aggrieved Employees on their wage statements.

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

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

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

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

26 41. Based on information and belief, DEFENDANTS failed and continue to fail to pay
27 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours
28 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in

1 a work week, in violation of California's overtime laws.

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

7 43. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
8 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
9 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
10 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
11 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
12 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
13 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
14 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
15 completely. For example, based on information and belief, PLAINTIFF and other Aggrieved
16 Employees were forced to take late meal periods in order to complete assigned job duties. Based on
17 information and belief, PLAINTIFF and other Aggrieved Employees were interrupted during
18 purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS'
19 premises due to the need to continue assigned job duties. For example, PLAINTIFF was frequently
20 required to cut any meal periods short and/or work through his meal periods completely in order to
21 complete assigned job duties.

22 44. For example, when the restaurant was busy, PLAINTIFF's supervisor would instruct
23 PLAINTIFF to work through his owed meal period. Other times, PLAINTIFF had to take his meal
24 period late (i.e. after the fifth hour of work) due to the need to complete assigned job duties.
25 PLAINTIFF alleges that DEFENDANTS would unlawfully edit the clock in and out times for his
26 and other Aggrieved Employees' meal periods in order to display at least a thirty minute off-duty
27 meal period during most if not all shifts worked, notwithstanding the fact that DEFENDANTS had
28 actual and/or constructive knowledge that DEFENDANTS had required PLAINTIFF and other

1 Aggrieved Employees' to perform work-related tasks during their meal periods.

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

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

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

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

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

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

26 51. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
27 records of the true start and end times of PLAINTIFF's and Aggrieved Employees' meal periods.
28 Based on information and belief, to the extent meal periods were recorded, DEFENDANTS illegally

1 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other
2 Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal
3 periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

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

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

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

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

23 56. Based on information and belief, DEFENDANTS did not have a have a compliant
24 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
25 practice. For example, based on information and belief, PLAINTIFF and other Aggrieved
26 Employees were unable to take compliant rest periods due to their need to complete assigned job
27 duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had
28 purported rest periods restricted to DEFENDANTS' premises. For example, PLAINTIFF was

1 frequently required to work through his owed rest periods due to the need to complete assigned job
2 duties.

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

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

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

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

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

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

27 63. DEFENDANTS' locations/facilities are generally similar in layout and design, and
28 there was, and continues to be, space that allows for a resting facility that employees may use to

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

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

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

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

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

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

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

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

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

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

18 73. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
19 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
20 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
21 from Aggrieved Employees paychecks during the relevant period including but not limited to
22 deducting costs of uniforms and/or other business costs and/or deducting wages for purported
23 overpayments from previous pay periods and/or unlawfully deducting wages for negligently
24 damaged property. Such a practice is in violation of including but not limited to, Labor Code
25 Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

26 74. **Failure to Produce Employment Records.** Based on information and belief,
27 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
28 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code

1 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF sent a
2 written request for payroll and personnel records to DEFENDANTS. Yet, DEFENDANTS failed to
3 timely produce any records within the time periods delineated by California labor law. Based on
4 information and belief, DEFENDANTS failed and continues to fail to timely produce complete
5 payroll and personnel records when requested by other Aggrieved Employees. Based on information
6 and belief, DEFENDANTS failed and continue to fail to timely produce complete time, pay, and
7 personnel records when requested by other Aggrieved Employees.

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

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

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

28 78. Based on information and belief, DEFENDANTS shifted the costs of doing business

1 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
2 information and belief DEFENDANTS required including but not limited to, uniforms/work
3 clothing/work shoes, personal protective/safety gear and/or the use of Aggrieved Employees'
4 personal mobile phone and data usage for work related purposes including but not limited to
5 receiving and responding to work related messages and/or phone calls.

6 79. For example, on information and belief, Aggrieved Employees received
7 calls/messages to their personal cell phones/mobile devices from supervisors and/or other
8 Aggrieved Employees regarding scheduling and/or other work tasks but were not provided any
9 and/or full reimbursement from DEFENDANTS for this personal cell phone use. For example,
10 PLAINTIFF regularly received text messages and/or calls to his personal cell phone/mobile device
11 from his supervisor throughout his shifts regarding work-related matters, however, DEFENDANTS
12 did not provide PLAINTIFF with any reimbursement for this business use of PLAINTIFF's personal
13 cell phone/mobile device.

14 80. Based on information and belief, Aggrieved Employees were not reimbursed for the
15 cost of using their personal phone for work related purposes and/or the cost of purchasing and/or
16 maintaining work uniforms/work clothing/work shoes, personal protective/safety gear. For example,
17 DEFENDANTS required PLAINTIFF to provide his own non-slip shoes to wear for work without
18 providing PLAINTIFF with any reimbursement for the business expenses PLAINTIFF incurred in
19 connection therewith.

20 81. Based on information and belief, at times, DEFENDANTS required Aggrieved
21 Employees to use their personal vehicles for work without reimbursing them for the personal vehicle
22 expenses they incurred in connection therewith. For example, based on information and belief, at
23 times, DEFENDANTS required Aggrieved Employees to travel from one of DEFENDANTS'
24 facilities/restaurants to a second of DEFENDANTS' facilities/restaurants for work without
25 reimbursing Aggrieved Employees for the expenses incurred in connection with DEFENDANTS'
26 business use of their personal vehicles.

27 82. Based on information and belief, DEFENDANTS regularly failed to reimburse and
28 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section

1 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
2 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
3 assigned by DEFENDANTS.

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

8 84. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
9 provides as follows:

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

18 86. Aggrieved Employees were not paid reporting time wages in accordance with
19 California law, including but not limited to the applicable IWC Wage Order. For example, based on
20 information and belief, at times, PLAINTIFF and/or other Aggrieved Employees reported to work
21 for a scheduled shift but were sent home and/or were not put to work and were not paid all owed
22 reporting time pay wages in accordance with California law.

23 87. Based on information and belief, DEFENDANTS have a policy and practice of
24 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
25 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
26 pay all reporting time wages to PLAINTIFF and Aggrieved Employees violated and continues to
27 violate the applicable Wage Order, and the California Labor Code, including but not limited to
28 section 1198.

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

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

11 90. **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 91. 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 92. 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 93. 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 94. 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 95. **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 96. **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 97. 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 98. 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 99. 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.

12 100. 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.
14 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
15 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
16 of seats would not interfere with the performance of their duties.

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

23 102. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
24 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
25 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
26 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
27 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
28 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to

1 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
2 Labor Code section 351.

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

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

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

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

25 107. Upon separation of employment, Aggrieved Employees' final paychecks were not
26 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
27 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
28 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,

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

4 108. For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck
5 until at least approximately one (1) week following PLAINTIFF's date of termination, and
6 PLAINTIFF's late final paycheck was devoid of all wages owed, including but not limited to, all
7 owed minimum wages, overtime wages, premium wages, vacation pay, all owed reporting time pay
8 wages, all owed sick leave and/or paid time off wages at the properly accrued rates, (including but
9 not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary
10 compensation, including but not limited to, shift differentials).

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

19 110. **Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every
20 employee who is discharged shall be paid at the place of discharge, and every employee who quits
21 shall be paid at the office or agency of the employer in the county where the employee has been
22 performing labor. All payments shall be made in the manner provided by law.

23 111. Based on information and belief, DEFENDANTS have a policy and practice of
24 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
25 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
26 office or agency of DEFENDANTS in the county where the work was performed, in violation of
27 Labor Code Section 208.

28 112. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

1 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

22 116. Based on information and belief, DEFENDANTS required Aggrieved Employees to
23 agree in writing to a background check which failed to abide by the requirements set forth in CA
24 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
25 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
26 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
27 the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,
28 failing to provide a way by which the individual could request a copy of the report, failing to disclose

1 the name, address, and telephone number of the third party preparing the report, and failing to
2 properly obtain authorization or consent to such a background check, and thus was an unlawful
3 background check.

4 117. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
5 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
6 section 432.5.

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

12 119. Based on further information and belief, DEFENDANTS knew that requiring
13 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
14 condition of obtaining and/or holding employment was unlawful.

15 120. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
16 condition of employment, DEFENDANTS violated Labor Code section 432.5.

17 Unlawful Inquires into Criminal History

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

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

27 Unlawful PAGA Waiver

28 123. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring

1 Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited
2 to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

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

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

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

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

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

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

Failure to Keep Accurate Records

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

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

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

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

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

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

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

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

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

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

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

20 **Meal Period Violations**

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

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

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

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

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

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

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

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

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

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

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

14 **Rest Period Violations**

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

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

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

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

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

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

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

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

5 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

24 **Minimum and Overtime Wage Violations**

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

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

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

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

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

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

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

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

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

12 **Statutory Wage Violations**

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

24 **Refusal to Make Payment**

25 166. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
26 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
27 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
28 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each

1 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
2 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
3 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
4 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

5 **Standard Conditions of Labor Violations**

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

14 **Business Expense Violations**

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

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

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 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
2 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
3 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

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

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

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

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

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

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

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

28 **Wage Statement Violations**

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

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

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

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

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

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

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

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

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

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

26 187. DEFENDANTS’ knowingly and intentionally failed to provide PLAINTIFF and
27 Aggrieved Employees with accurate, itemized wage statements.

28 188. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and Aggrieved

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

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

12 **Unlawful Deductions**

13 190. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
14 an employee any part of wages theretofore paid by said employer to said employee." Based on
15 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
16 paychecks during the relevant period, including but not limited to deducting costs of uniforms and/or
17 other business costs and/or deducting wages for purported overpayments from previous pay periods
18 and/or unlawfully deducting wages for negligently damaged property. Such a practice is in violation
19 of including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to
20 civil penalties under Labor Code Section 2699.

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

27 **Reporting Time Pay Violations**

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

1 192. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

21 **Violation of California Day of Rest Law**

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

26 197. Based on information and belief, DEFENDANTS have and continue to have a
27 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
28 consecutively in a workweek, in violation of including but not limited to, Labor Code Section

1 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
2 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
3 violation of California law, including but not limited to Labor Code Section 551.

4 **Seating Violations**

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

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

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

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

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

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

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

28 203. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's

1 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
2 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
3 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
4 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
5 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
6 Aggrieved Employee, results in a separate civil penalty.

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

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

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

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

28 207. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period

1 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
2 they experienced within the statutory period, and \$200 per pay period for each additional violation.

3 **Sick Leave Violations**

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

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

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

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

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

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

2 214. On information and belief, PLAINTIFF alleges that all of these practices were
3 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

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

1 **Untimely Payment of Final Wages**

2 219. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
3 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
4 payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an
5 employee not having a written contract for a definite period quits his or her employment, his or her
6 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
7 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
8 to his or her wages at the time of quitting.”

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

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

21 222. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
22 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
23 256.

24 **Violation of Labor Code Section 208**

25 223. Labor Code Section 208 provides: Every employee who is discharged shall be paid
26 at the place of discharge, and every employee who quits shall be paid at the office or agency of the
27 employer in the county where the employee has been performing labor. All payments shall be made
28 in the manner provided by law.

1 224. Based on information and belief, DEFENDANTS have a policy and practice of
2 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
3 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
4 office or agency of DEFENDANTS in the county where the work was performed, in violation of
5 Labor Code Section 208.

6 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

28 227. Based on information and belief, DEFENDANTS ordered unlawful financial credit

1 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
2 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
3 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

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

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

12 230. Based on further information and belief, DEFENDANTS knew that requiring
13 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
14 condition of obtaining and/or holding employment was unlawful.

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

17 Unlawful Inquires into Criminal History

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

22 233. Upon information and belief, DEFENDANTS, in violation of California law,
23 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
24 ("FEHA"), asked Aggrieved Employees about convictions prior to extending an offer of
25 employment and/or otherwise impermissibly inquired into criminal history on its employment
26 application in violation of California law.

27 234. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
28 Code section 432.7. By asking about convictions at the application phase or prior to extending an

1 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
2 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
3 disclose arrests and/or convictions as a condition of employment.

4 Unlawful PAGA Waiver

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

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

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

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

25 239. Under the provisions of PAGA and the above mentioned Labor Code sections,
26 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
27 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
28 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all

1 interpretations of these laws by California Courts and administrative bodies, as well as any other
2 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: September 5, 2023

CROSNER LEGAL, PC

By: 
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Brandon Brouillette, Esq.
Attorneys for Plaintiff
GILBERT GARCIA