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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 PEDRO BRACAMONTE FIGUEROA, on
15 behalf of the State of California, and others
16 similarly situated and aggrieved,

17 Plaintiff,

18 v.

19 ESSEX PROPERTY TRUST, INC., a
20 Maryland Corporation; ESSEX
21 PORTFOLIO, L.P., a California Limited
22 Partnership; and DOES 1-100, inclusive,

23 Defendants.

Case No.: 23STCV21273

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

1 Plaintiff, PEDRO BRACAMONTE FIGUEROA (“PLAINTIFF”), an individual on behalf
2 of PLAINTIFF, the State of California, and all other Aggrieved Employees (as defined below),
3 hereby files this Complaint against Defendants ESSEX PROPERTY TRUST, INC., a Maryland
4 Corporation; ESSEX PORTFOLIO, L.P., a California Limited Partnership; and DOES 1-100,
5 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
6 believes and thereon alleges as follows:

7 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
26 DEFENDANTS as a non-exempt employee with a job title of maintenance technician or a similar
27 title from including but not limited to, in or around 2016 through in or around August 2020 and from
28 in or around August 2022 through on or around November 22, 2022. PLAINTIFF worked for

1 DEFENDANTS at including but not limited to DEFENDANTS' properties in Woodland Hills,
2 California.

3 6. DEFENDANTS are a California Limited Partnership and/or Maryland Corporation
4 that, at all relevant times, were authorized to do business within the State of California and are doing
5 business in the State of California.

6 7. DEFENDANTS own, operate, manage and/or staff its employees to work at
7 including but not limited to, residential apartment homes/complexes and/or residential communities
8 and/or other location(s) in California, including but not limited to residential apartment homes
9 and/or residential communities in Woodland Hills, California. DEFENDANTS, through its various
10 locations serve the property management industry.¹

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

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

27
28 ¹ See <https://www.essexapartmenthomes.com/apartments>. Last visited on June 27, 2023.

1 **JOINT LIABILITY**

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

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

26 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
27 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
28 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices

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

11 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
12 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
13 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
14 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
15 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
16 considered the joint employers of PLAINTIFF and Aggrieved Employees. For example, based on
17 information and belief, DEFENDANTS, and each of them, maintain the same principal place of
18 business and/or individual agent for service of process as provided to the California Secretary of
19 State and use some of the same attorneys and/or human resources personnel to oversee employment-
20 related matters. Moreover, DEFENDANTS are each identified in documents in PLAINTIFF's
21 personnel file.

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

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

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

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

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

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

25 **PAGA ALLEGATIONS**

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

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

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

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

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

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

25 23. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
26 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
27 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
28 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code

1 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
2 has duly accrued.

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

6 **FACTUAL ALLEGATIONS**

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

11 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFFS worked for
12 DEFENDANTS as a non-exempt employee with a job title of, maintenance technician or a similar
13 title from in or around including but not limited to, from in or around 2016 through in or around
14 August 2020 and from in or around August 2022 through on or around November 22, 2022. through
15 in or around . PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Woodland Hills,
16 California location(s). PLAINTIFF regularly worked at least eight (8) to fourteen (14) hours per day
17 hours, at least at least five (5) days per week days per week. DEFENDANTS paid PLAINTIFF an
18 hourly rate for time counted by DEFENDANTS as hours worked.

19 27. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
20 hourly basis for time counted by DEFENDANTS as hours worked. Based on information and belief,
21 Aggrieved Employees also earned non-discretionary compensation, including without limitation,
22 non-discretionary bonuses/incentive pay and/or commissions and/or shift differential pay and/or
23 other non-discretionary compensation.

24 28. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
25 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
26 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
27 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
28 rounding policies, and failure to relieve employees of all duties/employer control during unpaid

1 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
2 below.

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

9 30. Based on information and belief, Aggrieved Employees were not paid for all hours
10 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
11 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
12 the clock work policies and/or practices. For example, PLAINTIFF and other Aggrieved
13 Employees, including without limitation, Aggrieved Employees working as maintenance
14 technicians and/or in other similar position(s) were frequently required to be on-call twenty-four
15 hours per day for a period of at least two consecutive weeks at a time during which time they were
16 required to respond to any incoming calls from tenants immediately and/or within unduly restrictive
17 time frames and are further required to show up for any onsite emergency and/or maintenance
18 situations within unduly restrictive time frames of receiving the call(s). However, DEFENDANTS
19 did not compensate PLAINTIFF and other Aggrieved Employees at all and/or in full for this time
20 spent under DEFENDANTS' control, including but not limited to, all standby and/or on-call time,
21 resulting in DEFENDANTS' failure to pay PLAINTIFF and other Aggrieved Employees for all
22 hours worked and the underpayment of minimum wages and overtime wages owed to PLAINTIFF
23 and other Aggrieved Employees.

24 31. For example, PLAINTIFF was required to respond to at least approximately three
25 (3) to four (4) calls per week, however, PLAINTIFF was not compensated for any and/or all standby
26 time and/or on-call time and/or time spent responding to work-related phone calls/messages,
27 resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the
28 underpayment of minimum wages and overtime wages owed to PLAINTIFF.

1 32. Based on information and belief, DEFENDANTS have a policy and practice of
2 suffering, permitting and/or requiring Aggrieved Employees to perform uncompensated pre-shift
3 and/or post-shift off-the-clock work. For example, based on information and belief, prior to
4 beginning a scheduled shift, PLAINTIFF and other Aggrieved Employees were required to start
5 and/or boot all of DEFENDANTS' computer systems and/or software and/or applications so as to
6 have all systems running at the start of the scheduled shift. As such, Aggrieved Employees typically
7 spent at least approximately a couple minutes before each scheduled shift preparing work
8 application(s), including but not limited to, timekeeping applications, in order to clock in and begin
9 their shifts. This pre-shift work was off-the-clock and uncompensated resulting in unpaid minimum
10 and overtime wages.

11 33. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
12 Employees for additional time spent performing pre-shift and/or post-shift off-the-clock work/work
13 outside of their scheduled shifts. Based on information and belief, Aggrieved Employees were not
14 compensated all owed minimum and overtime wages for all time spent performing work duties
15 outside of their scheduled shift and/or time spent on call. For example, based on information and
16 belief, PLAINTIFF and other Aggrieved Employees would regularly have to attend to emergency
17 situations on DEFENDANTS' premises and/or fill maintenance requests and/or assist tenants and/or
18 perform other work tasks after hours/outside of their scheduled shift times without being
19 compensated for all on-call time and/or all call-back time and/or all time spent performing work
20 duties outside of their scheduled shift times.

21 34. As explained above, PLAINTIFF and other Aggrieved Employees were not
22 compensated for all on-call time during which PLAINTIFF and other Aggrieved Employees were
23 subject to DEFENDANTS' control. For example, at times, DEFENDANTS required PLAINTIFF
24 and other Aggrieved Employees to be "on call" twenty-four hours per day during which said on-call
25 time DEFENDANTS subjected PLAINTIFF and other Aggrieved Employees to frequent calls to
26 return back to work, further requiring PLAINTIFF and other Aggrieved Employees to respond to
27 work-related phone calls/messages within fixed time frames that were unduly restrictive, yet
28 DEFENDANTS failed to compensate PLAINTIFF and other Aggrieved Employees at all and/or in

1 full for all time DEFENDANTS required they spend on-call, resulting in DEFENDANTS' failure
2 to pay PLAINTIFF and other Aggrieved Employees for all hours worked and the underpayment of
3 wages owed to PLAINTIFF and other Aggrieved Employees.

4 35. Based on information and belief, DEFENDANTS required Aggrieved Employees to
5 be at their assigned workstations at the start of a scheduled shift, thereby forcing Aggrieved
6 Employees to gather work-related equipment and/or safety gear prior to their scheduled shift and/or
7 prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

8 36. Based on information and belief, DEFENDANTS required Aggrieved Employees to
9 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
10 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

11 37. Based on information and belief, Aggrieved Employees were required to complete
12 other off-the-clock work tasks after clocking out for the end of their shifts and/or during
13 uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum
14 and overtime wages owed to Aggrieved Employees. For example, based on information and belief,
15 DEFENDANTS required Aggrieved Employees to clock out for the end of their shifts but to
16 continue working due to the need to return/maintain tools, clean and/or organize their work
17 stations/areas and/or respond to work-related communications and/or perform other work tasks off-
18 the-clock, resulting in the underpayment of minimum wages and overtime wages owed to Aggrieved
19 Employees.

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

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

1 clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages
2 owed to Aggrieved Employees. Based on information and belief, Aggrieved Employees
3 experienced the same issues when clocking out for shifts and/or back in for meal periods. This time
4 spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid
5 minimum wages owed to Aggrieved Employees.

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

1 Employees as exempt employees to try to evade California wage and hour laws including but not
2 limited to, payment of minimum and overtime wages and provision of meal and rest periods even
3 though misclassified Aggrieved Employees did not satisfy any test for exemption under California
4 law. For example, based on information and belief, Aggrieved Employees did not regularly exercise
5 discretion/independent judgment in their jobs and typically spent more than fifty percent of their
6 workday performing non-exempt duties such as, but not limited to, answering phone calls,
7 scheduling workers, collecting signatures on documents/clerical/ministerial duties, and/or other
8 non-discretionary duties not requiring the exercise of independent judgment to perform. Based on
9 further information and belief, misclassified Aggrieved Employees were not compensated with a
10 monthly salary (exclusive of the value of any lodging) that equated to twice the California minimum
11 wage rate. See, Labor Code section 515 and Cal. Code of Regs., tit. 8, § 11040 [providing that, for
12 each exempted category, the employee must earn “a monthly salary equivalent to no less than two
13 (2) times the state minimum wage for full-time employment”].

14 41. Based on information and belief, Aggrieved Employees that were paid on a salary
15 basis and/or otherwise misclassified as exempt were denied all owed minimum and overtime wages
16 due to DEFENDANTS’ misclassification scheme. Violation of IWC Wage Order Section 10:
17 Section 10 of all applicable IWC Wage Orders states that “lodging may not be credited against the
18 minimum wage without a voluntary written agreement between the employer and the employee.”
19 Case law indicates that the agreement must state that the employer will credit lodging against the
20 employee’s wages. See, Von Nothdurft v. Steck (2014) 227 Cal.App.4th 524 (2014) (the employer
21 and the employee “must voluntarily agree to credit lodging against the employee’s wages.”).
22 Assuming the existence of such a voluntary written agreement, Section 10 of IWC Wage Order 5-
23 2001 (and all applicable IWC Wage Orders) sets forth the maximum amounts that can be credited
24 for lodging against the minimum wage.

25 42. Based on information and belief, DEFENDANTS had and has a policy and practice
26 of unlawfully crediting lodging against the minimum wages owed to Aggrieved Employees,
27 resulting in the underpayment of minimum wages owed to Aggrieved Employees. For example,
28 based on information and belief, DEFENDANTS credits lodging towards its minimum wage

1 obligations to Aggrieved Employees that exceeds the maximum allowable rental credit under
2 California law and/or DEFENDANTS fails to execute voluntary written agreement(s) to credit
3 lodging against its minimum wage obligations due to, including but not limited to, failure to
4 explicitly state that the rental credit is being applied towards the employer's minimum wage
5 obligations and/or failure to execute any voluntary written agreement, as required under California
6 law. See Section 10 of IWC Wage Order Section 5-2001 (and all applicable IWC Wage Orders).

7 43. Based on information and belief, DEFENDANTS had actual and/or constructive
8 knowledge that its time-rounding and auto-deduction policies and practices, failure to provide off-
9 duty meal periods, payment according to scheduled hours rather than actual hours worked, and other
10 mandated off-the-clock work described above resulted in the underpayment of minimum wages
11 owed to PLAINTIFF and other Aggrieved Employees, in violation of California's minimum wage
12 laws. These violations subject DEFENDANTS, to civil penalties under Labor Code sections 558,
13 558.1, 1197.1 and all applicable IWC Wage Orders, including but not limited to Wage Order 5-
14 2001, section 20. Each violation of each Labor Code section and Wage Order provision results in
15 a separate civil penalty, for each Aggrieved Employee, for each pay period during which the
16 referenced statutes and Wage Order provisions were violated.

17 44. Based on information and belief, at times, some Aggrieved Employees, including
18 but not limited to those working as property managers, onsite property managers and/or similar
19 title(s) were misclassified by DEFENDANTS as exempt and compensated on a salary basis when
20 they were in fact non-exempt employees. Based on information and belief, DEFENDANTS also
21 provided Aggrieved Employees with onsite lodging which DEFENDANTS accounted for as a
22 portion of their earned compensation.

23 45. Based on information and belief, Aggrieved Employees were also compensated with
24 non-discretionary remuneration, including but not limited to, non-discretionary bonuses/incentive
25 pay. During the relevant period, DEFENDANTS misclassified Aggrieved Employees as exempt
26 employees to try to evade California wage and hour laws including but not limited to, payment of
27 minimum and overtime wages and provision of meal and rest periods even though misclassified
28 Aggrieved Employees did not satisfy any test for exemption under California law. For example,

1 based on information and belief, misclassified Aggrieved Employees did not regularly exercise
2 discretion/independent judgment in his job and typically spent more than fifty percent of his
3 workday performing non-exempt duties such as, but not limited to, answering phone calls, collecting
4 signatures on documents/clerical/ministerial duties, among other non-discretionary duties not
5 requiring the exercise of independent judgment to perform.

6 46. Based on further information and belief, misclassified Aggrieved Employees were
7 not compensated with a monthly salary (exclusive of the value of any lodging) that equated to twice
8 the California minimum wage rate. See, Labor Code section 515 and Cal. Code of Regs., tit. 8, §
9 11040 [providing that, for each exempted category, the employee must earn “a monthly salary
10 equivalent to no less than two (2) times the state minimum wage for full-time employment”]. Based
11 on information and belief, Aggrieved Employees that were paid on a salary basis and/or otherwise
12 misclassified as exempt were also denied all owed minimum and overtime wages due to
13 DEFENDANTS’ misclassification scheme.

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

19 48. Based in information and belief, DEFENDANTS implemented a time-rounding
20 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
21 compensable time because the time-rounding system implemented by DEFENDANTS would
22 almost always, if not always, result in understating actual compensable work time.

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

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

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

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

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

1 meal periods. For example, PLAINTIFF's supervisor would regularly interrupt PLAINTIFF during
2 PLAINTIFF's purported meal periods to respond to work-related matters. Other times, PLAINTIFF
3 was forced to take his meal periods late (i.e. after working more than five (5) hours due to the need
4 to complete assigned job duties. Based on information and belief, PLAINTIFF was not paid meal
5 period premiums for these missed or otherwise legally noncompliant meal periods.

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

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

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

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

24 58. Moreover, based on information and belief, Aggrieved Employees who worked shifts
25 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.
26 For example, when PLAINTIFF worked shifts lasting longer than ten (10) and/or twelve (12) hours,
27 PLAINTIFF was not allowed any version of a second meal period.

28 59. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and

1 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
2 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
3 did DEFENDANTS have any sort of compliant policy in practice.

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

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

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

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

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

1 65. Based on information and belief, DEFENDANTS did not have a have a compliant
2 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
3 practice. For example, based on information and belief, Aggrieved Employees were frequently
4 unable to take compliant rest periods due to their need to complete assigned job duties and/or were
5 unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods
6 restricted to DEFENDANTS' premises. For example, PLAINTIFF was rarely, if ever, able to take
7 even a single rest period during his shifts due to understaffing and/or the need to continue
8 completing assigned job duties.

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

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

15 68. Based on information and belief, DEFENDANTS implemented policies and/or
16 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
17 DEFENDANTS' control during rest periods.

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

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

28 71. **Cooldown Recovery Period Violations.** California Code of Regulations, Title 8,

1 section 3395 mandates that all employers with “outdoor places of employment” implement a heat
2 illness prevention program that includes, among other requirements, providing workers “cool-
3 down” periods of at least five minutes in the shade. Specifically, section 3395 provides that
4 “employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of
5 no less than five minutes at a time when they feel the need to do so to protect themselves from
6 overheating” and that “such access to shade shall be permitted at all times.” Under California Labor
7 Code section 226.7, if an employer fails to provide an employee a recovery period, the employer
8 shall pay the employee one additional hour of pay at the employee’s regular rate of compensation
9 for each workday that the meal or rest or recovery period is not provided.

10 72. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
11 required to spend multiple hours at a time outdoors in significantly high temperature heat conditions.
12 DEFENDANTS failed to provide proper heat illness prevention training and/or heat illness
13 policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8
14 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
15 California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
16 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
17 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
18 shade for extended periods of time. In addition, DEFENDANTS, failed to pay PLAINTIFF and
19 other Aggrieved Employees with an additional hour of pay at PLAINTIFF’s regular rate of pay for
20 each missed cooldown recovery period.

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

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

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

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

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

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

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

28 79. Based on information and belief, wage statements issued by DEFENDANTS failed

1 to list all applicable hourly rates in effect during the pay period and the corresponding number of
2 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
3 Code section 226(a)(9).

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

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

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

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

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

19 85. **Unlawful Deductions and/or Fees.** Labor Code section 221 prohibits an employer
20 from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said
21 employer to said employee." Based on information and belief DEFENDANTS made unlawful
22 deductions from Aggrieved Employees' paychecks during the relevant period including but not
23 limited to, deducting costs of uniforms and/or other business costs and/or deducting wages for
24 purported overpayments from previous pay periods and/or unlawfully deducting wages for
25 negligently damaged property. Such a practice is in violation of including but not limited to, Labor
26 Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section
27 2699.

28 86. Based on further information and belief, DEFENDANTS have a policy and practice

1 of requiring Aggrieved Employees to incur fees to collect their paychecks, in violation of, including
2 but not limited to, Labor Code Section 212.

3 87. Based on further information and belief, DEFENDANTS pay Aggrieved Employees
4 via direct deposit without obtain voluntary authorization for paying wages via direct deposit, in
5 violation of, Labor Code Section 213(d).

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

12 89. **Violation of Labor Code Section 222.5.** Labor Code section 222.5 provides that
13 employers may not require current or prospective employees to pay for medical or physical
14 examinations required for employment or required by federal, state or local law.

15 90. Based on information and belief, DEFENDANTS maintain a policy and practice of
16 requiring Aggrieved Employees to pay for medical and/or physical examinations required for
17 employment and/or required by federal, state or local law, including but not limited to, Covid-related
18 medical and/or physical testing/related examinations, in violation of, including but not limited to,
19 Labor Code section 222.5 and/or 2802.

20 91. **Failure to Produce Employment Records.** Based on information and belief,
21 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
22 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code
23 sections 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and belief,
24 DEFENDANTS failed and continues to fail to timely produce complete payroll and personnel
25 records when requested by other Aggrieved Employees. Based on information and belief,
26 DEFENDANTS failed and continue to fail to timely produce complete time, pay, and personnel
27 records when requested by other Aggrieved Employees.

28 92. **Inaccurate Records.** Based on the above-described unlawful policies and practices,

1 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
2 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
3 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
4 required by law, including but not limited to the following records: total daily hours worked,
5 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
6 began and ended each work period, time records of meal periods, and accurate itemized wage
7 statements.

8 93. DEFENDANTS have failed and continue to fail to keep accurate and complete
9 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
10 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
11 employer control during unpaid meal periods, failure to record the true start and end times of meal
12 periods, shift start times and shift end times, and other off-the-clock work policies and practices
13 described herein.

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

19 95. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
20 Aggrieved Employees who were compensated on a commission basis with proper written
21 commission agreements, in violation of Labor Code section 2751.

22 96. **Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an
23 employer to pay employees compensated on a piece-rate basis separately for rest and recovery
24 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an
25 employer to include on the wage statements for these employees the total hours of compensable rest
26 and recovery period, the total hours for other non-productive time, the rates of compensation for
27 these hours, and the gross wages paid for these hours. In addition, the statute requires that employees
28 shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the

1 higher of: (i) an average hourly rate determined by dividing the total compensation for the
2 workweek, exclusive of compensation for rest and recovery periods and any premium compensation
3 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,
4 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to
5 employees compensated on a commission basis.

6 97. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
7 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
8 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
9 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
10 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
11 226.2.

12 98. **Unreimbursed Business Expenses.** Based on information and belief,
13 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
14 as a direct consequence of the performance of their job duties without providing reimbursement, in
15 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
16 Aggrieved Employees were improperly required to provide and maintain work tools that are
17 supposed to be the responsibility of the employer.

18 99. Based on information and belief, DEFENDANTS shifted the costs of doing business
19 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
20 information and belief DEFENDANTS required Aggrieved Employees to pay for business
21 expenses including but not limited to including but not limited to, uniforms/work clothing/work
22 shoes/personal protective/safety gear and the use of Aggrieved Employees' personal mobile phone,
23 internet and/or data usage for work related purposes, including but not limited to, to receive and
24 respond to work related messages and/or phone calls.

25 100. For example, based on information and belief, Aggrieved Employees received work-
26 related calls and/or messages to their personal phones from tenants/prospective tenants and/or
27 managers and/or supervisors, including but not limited to, regarding scheduling/other work tasks
28 and/or were otherwise required to use their personal cell phones/mobile devices to carry out their

1 assigned job duties but were not reimbursed at all and/or in full by DEFENDANTS for these
2 business expenses as required under California Law.

3 101. For example, PLAINTIFF and other Aggrieved Employees were required to use their
4 personal cell phones/ mobile devices to receive/make work-related calls/messages. DEFENDANTS
5 also required Aggrieved Employees to download and use work-related applications, including but
6 not limited to, timekeeping applications. Based on information and belief, DEFENDANTS failed
7 to provide any and/or full reimbursement for these business expenses as required under California
8 law.

9 102. Also, DEFENDANTS did not reimburse Aggrieved Employees for the costs they
10 incurred in having to purchase/maintain their own work tools, including but not limited to, hand
11 tools, power tools and/or equipment, cleaning tools/supplies and/or maintenance tools/supplies they
12 required to perform their assigned job duties.

13 103. For example, PLAINTIFF was required to supply most if not all of his own tools
14 required to perform his assigned job duties without receiving any/full reimbursement from
15 DEFENDANTS for the costs he incurred in connection with having to purchase, repair and/or
16 maintain the personal tools (e.g., pliers, hammers, and/or screwdrivers) and/or equipment
17 DEFENDANTS required PLAINTIFF use to perform his job duties. Based on further information
18 and belief, Aggrieved Employees incurred expenses associated with being required to use their
19 personal vehicles for work without receiving full reimbursement from DEFENDANTS for the costs
20 they incurred in connection therewith.

21 104. For example, based on information and belief, DEFENDANTS required Aggrieved
22 Employees to drive their personal vehicles between DEFENDANTS' various locations/complexes
23 and/or for other work-related purposes without reimbursing Aggrieved Employees for all vehicle-
24 related expenses they incurred as a direct consequence thereof, including but not limited to, cost of
25 fuel, mileage, and/or vehicle wear and tear. As such, DEFENDANTS failed to reimburse Aggrieved
26 Employees at the Internal Revenue Service (IRS) mandated per mile compensation rate(s) in effect
27 during the relevant time period and/or otherwise failed to compensate Aggrieved Employees for all
28 reasonable vehicle-related expenses they were required to incur in performing their jobs. For

1 example, when driving between job sites during PLAINTIFF's shifts, PLAINTIFF was required to
2 use his personal vehicle but was not reimbursed by DEFENDANTS in any manner for
3 DEFENDANTS' business use of PLAINTIFF's personal vehicle.

4 105. As explained above, based on information and belief, Aggrieved Employees were
5 not reimbursed for the cost of using their personal phone for work related purposes and/or the cost
6 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
7 protective/safety gear (e.g., face masks and/or gloves).

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

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

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

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

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

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

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

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

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

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

1 compensation into the sick leave pay rate calculation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Labor Code Section 208.

2 135. **Violation of Labor Code Section 2441.** Labor Code section 2441(a) mandates that
3 “[e]very employer of labor in this state shall, without making a charge therefor, provide fresh and
4 pure drinking water to his or her employees during working hours. Access to the drinking water
5 shall be permitted at reasonable and convenient times and places.”

6 136. Based on information and belief, DEFENDANTS maintain a policy and practice of
7 failing to provide fresh and pure drinking water to Aggrieved Employees during working hours at
8 reasonable and convenient times and places, in violation of, including but not limited to, Labor Code
9 section 2441.

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

19 138. Moreover, by requiring Aggrieved Employees to disclose prior salary information in
20 a written application for employment, DEFENDANTS violated Labor Code section 432.5 by
21 requiring Aggrieved Employees to agree in writing to disclose their salary history as a condition of
22 obtaining employment with DEFENDANTS, in violation of California law.

23 139. **Violation of Labor Code Section 970.** Labor Code section 970 prohibits an
24 employer from knowingly making false representations about the nature or existence of work,
25 continued employment and/or compensation to induce an employee to move/relocate in reliance
26 thereon. Specifically, Labor Code section 970 provides:

27 140. No person, or agent or officer thereof, directly or indirectly, shall influence, persuade,
28 or engage any person to change from one place to another in this State or from any place outside to

1 any place within the State, or from any place within the State to any place outside, for the purpose
2 of working in any branch of labor, through or by means of knowingly false representations, whether
3 spoken, written, or advertised in printed form, concerning either:

4 (a) The kind, character, or existence of such work;

5 (b) The length of time such work will last, or the compensation therefor.

6 141. Based on information and belief, DEFENDANTS have a policy and practice of
7 knowingly making false representations to Aggrieved Employees regarding obtaining/continued
8 employment, the nature of work to be performed and/or the terms of their compensation to influence,
9 persuade or engage its employees to relocate/move for purposes of employment, in violation of
10 Labor Code section 970.

11 142. **Violation of Labor Code Section 976.** Labor Code section 976 provides that “No
12 person shall publish or cause to be published any advertisement, solicitation or communication in
13 any newspaper, poster, or letter, offering employment as a salesman, broker or agent whether as an
14 employee or independent contractor, which advertisement, solicitation or communication (a) is
15 willfully designed to mislead any person as to compensation or commissions which may be earned;
16 or (b) falsely represents the compensation or commissions which may be earned.”

17 143. Based on information and belief, DEFENDANTS have a policy and/or practice of
18 offering prospective employees, including Aggrieved Employees, a higher compensation and
19 commission that is misleading as it falsely represents the compensation or commission that will be
20 earned during employment, as the actual compensation or commission earned is lower than that
21 which is offered to induce employment or continued employment. Such a practice or policy is in
22 violation of Labor Code section 976.

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

24 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

25 145. Based on information and belief, DEFENDANTS required Aggrieved Employees to
26 agree in writing to unlawful conditions of employment including but not limited to unlawful
27 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
28 violation of Labor Code section 432.5.

1 146. Based on information and belief, DEFENDANTS ordered unlawful financial credit
2 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
3 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
4 employment, in violation of California and Federal law, which results in a further violation of Labor
5 Code section 432.5.

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

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

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

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

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

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

8 152. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
9 condition of employment, DEFENDANTS violated Labor Code section 432.5.

10 Unlawful Inquires into Criminal History

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

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

20 Unlawful PAGA Waiver

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

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

1 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

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

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

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

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

26 **FIRST CAUSE OF ACTION**
27 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
28 **2698, ET SEQ.**
(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all
Defendants)

1 161. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

2 **Failure to Keep Accurate Records**

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

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

12 164. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
13 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
14 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
15 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
16 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
17 period during which the referenced statutes and Wage Order provisions were violated.²

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

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

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

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

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

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

23 **Meal Period Violations**

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

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

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

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

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

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

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

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

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

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

17 **Rest Period Violations**

18 179. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
19 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
20 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
21 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
22 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
23 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
24 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
25 1029). The rest period requirement obligates employers to permit and authorize employees to take
26 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
27 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
28 257. If the employer fails to provide any required rest period, the employer must pay the employee

1 one hour of pay at the employee's regular rate of compensation for each workday the employer did
2 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
3 applicable IWC Wage Order, §12(B).

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

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

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

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

27 184. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
28 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there

1 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
2 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
3 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
4 the regular rate of compensation for purposes of determining the owed rest period premium.

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

8 **Cooldown Recovery Period Violations**

9 186. California Code of Regulations, Title 8, section 3395 mandates that all employers
10 with “outdoor places of employment” implement a heat illness prevention program that includes,
11 among other requirements, providing workers “cool-down” periods of at least five minutes in the
12 shade. Specifically, section 3395 provides that “employees shall be allowed and encouraged to take
13 a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the
14 need to do so to protect themselves from overheating” and that “such access to shade shall be
15 permitted at all times.” Under California Labor Code section 226.7, if an employer fails to provide
16 an employee a recovery period, the employer shall pay the employee one additional hour of pay at
17 the employee’s regular rate of compensation for each workday that the meal or rest or recovery
18 period is not provided.

19 187. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
20 required to spend multiple hours at a time outdoors in significantly high temperature heat conditions.
21 DEFENDANTS failed to provide proper heat illness prevention training and/or heat illness
22 policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8
23 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
24 California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
25 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
26 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
27 shade for extended periods of time. In addition, DEFENDANTS, failed to pay PLAINTIFF and
28 other Aggrieved Employees with an additional hour of pay at PLAINTIFF’s regular rate of pay for

1 each missed cooldown recovery period.

2 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

21 **Minimum and Overtime Wage Violations**

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

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

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

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

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

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

26 198. Based on information and belief, DEFENDANTS further violated California's
27 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
28 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary

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

5 199. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
6 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
7 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
8 Wage Orders, section 20.

9 **Failure to Provide Written Commission Agreements**

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

15 201. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
16 Aggrieved Employees who were compensated on a commission basis with proper written
17 commission agreements, in violation of Labor Code section 2751.

18 **Violation of Labor Code Section 226.2**

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

1 law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

2 203. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
3 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
4 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
5 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
6 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
7 226.2.

8 **Statutory Wage Violations**

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

20 **Refusal to Make Payment**

21 205. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
22 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
23 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
24 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
25 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
26 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
27 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
28

1 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

2 **Standard Conditions of Labor Violations**

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

11 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

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

25 **Wage Statement Violations**

26 216. California law requires every employer semi-monthly or at the time of each payment
27 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
28 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of

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

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

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

25 219. As explained above, wage statements issued by DEFENDANTS failed to list the
26 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
27 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
28 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices

1 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
2 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
3 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

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

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

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

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

23 226. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
24 Aggrieved Employees with accurate, itemized wage statements.

25 227. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
26 Employees have suffered injury. The absence of accurate information on their wage statements has
27 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
28 mathematical computations to determine the amount of wages owed, and will cause difficulty and

1 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
2 submission of inaccurate information about wages and amounts deducted from wages to state and
3 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
4 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
5 and pay records than if DEFENDANT had complied with its legal obligations.

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

9 **Unlawful Deductions and/or Fees**

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

18 230. Based on further information and belief, DEFENDANTS have a policy and practice
19 of requiring Aggrieved Employees to incur fees to collect their paychecks, in violation of, including
20 but not limited to, Labor Code Section 212.

21 231. Based on further information and belief, DEFENDANTS pay Aggrieved Employees
22 via direct deposit without obtain voluntary authorization for paying wages via direct deposit, in
23 violation of, Labor Code Section 213(d).

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

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

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

3 **Violation of Labor Code Section 222.5**

4 233. Labor Code section 222.5 provides that employers may not require current or
5 prospective employees to pay for medical or physical examinations required for employment or
6 required by federal, state or local law.

7 234. Based on information and belief, DEFENDANTS maintain a policy and practice of
8 requiring Aggrieved Employees to pay for medical and/or physical examinations required for
9 employment and/or required by federal, state or local law, including but not limited to, Covid-related
10 medical and/or physical testing/related examinations, in violation of, including but not limited to,
11 Labor Code section 222.5 and/or 2802.

12 **Reporting Time Pay Violations**

13 235. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

27 238. Based on information and belief, DEFENDANTS have a policy and practice of
28 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,

1 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
2 pay all reporting time wages to PLAINTIFF and Aggrieved Employees violated and continues to
3 violate the applicable Wage Order, and the California Labor Code, including but not limited to
4 section 1198.

5 **Violation of California Day of Rest Law**

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

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

16 **Seating Violations**

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

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

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

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

27 243. Suitable seating is one of the worker protections covered by California's Wage
28 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly

1 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
2 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

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

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

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

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

25 248. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
26 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
27 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
28 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep

1 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
2 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
3 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
4 Labor Code section 351.

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

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

15 **Sick Leave Violations**

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

23 252. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
24 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
25 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
26 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
27 Aggrieved Employees' intelligent exercise of their paid sick leave.

28 253. But for this failure, PLAINTIFF and other Aggrieved Employees would have used

1 their paid sick leave at least prior to their respective separations, for as on several occasions
2 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
3 compensation.

4 254. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
5 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
6 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
7 were entitled to the maximum number of hours accruable.

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

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

14 257. On information and belief, PLAINTIFF alleges that all of these practices were
15 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

28 260. California Labor Code section 227.3 provides that when an employer policy provides

1 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
2 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
3 employee's final rate in accordance with such contract of employment or employer policy respecting
4 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
5 off upon termination.

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

13 **Untimely Payment of Final Wages**

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

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

27 264. Based in information and belief, DEFENDANTS failed and continue to fail to timely
28 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in

1 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF
2 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not
3 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
4 sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all
5 owed vacation pay/paid time off paid at the final rate including non-discretionary compensation,
6 including but not limited to, shift differentials).

7 265. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
8 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
9 256.

10 **Violation of Labor Code Section 208**

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

15 267. Based on information and belief, DEFENDANTS have a policy and practice of
16 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
17 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
18 office or agency of DEFENDANTS in the county where the work was performed, in violation of
19 Labor Code Section 208.

20 **Violation of Labor Code Section 2441**

21 268. Labor Code section 2441(a) mandates that “[e]very employer of labor in this state
22 shall, without making a charge therefor, provide fresh and pure drinking water to his or her
23 employees during working hours. Access to the drinking water shall be permitted at reasonable and
24 convenient times and places.”

25 269. Based on information and belief, DEFENDANTS maintain a policy and practice of
26 failing to provide fresh and pure drinking water to Aggrieved Employees during working hours at
27 reasonable and convenient times and places, in violation of, including but not limited to, Labor Code
28 section 2441.

1 **Unlawful Inquiries into Salary History**

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

10 271. Moreover, by requiring Aggrieved Employees to disclose prior salary information in
11 a written application for employment, DEFENDANTS violated Labor Code section 432.5 by
12 requiring Aggrieved Employees to agree in writing to disclose their salary history as a condition of
13 obtaining employment with DEFENDANTS, in violation of California law.

14 **Violation of Labor Code Section 970**

15 272. Labor Code section 970 prohibits an employer from knowingly making false
16 representations about the nature or existence of work, continued employment and/or compensation
17 to induce an employee to move/relocate in reliance thereon. Specifically, Labor Code section 970
18 provides:

19 273. No person, or agent or officer thereof, directly or indirectly, shall influence, persuade,
20 or engage any person to change from one place to another in this State or from any place outside to
21 any place within the State, or from any place within the State to any place outside, for the purpose
22 of working in any branch of labor, through or by means of knowingly false representations, whether
23 spoken, written, or advertised in printed form, concerning either:

24 (a) The kind, character, or existence of such work;

25 (b) The length of time such work will last, or the compensation therefor.

26 274. Based on information and belief, DEFENDANTS have a policy and practice of
27 knowingly making false representations to Aggrieved Employees regarding obtaining/continued
28 employment, the nature of work to be performed and/or the terms of their compensation to influence,

1 persuade or engage its employees to relocate/move for purposes of employment, in violation of
2 Labor Code section 970.

3 **Violation of Labor Code Section 976**

4 275. Labor Code section 976 provides that “No person shall publish or cause to be
5 published any advertisement, solicitation or communication in any newspaper, poster, or letter,
6 offering employment as a salesman, broker or agent whether as an employee or independent
7 contractor, which advertisement, solicitation or communication (a) is willfully designed to mislead
8 any person as to compensation or commissions which may be earned; or (b) falsely represents the
9 compensation or commissions which may be earned.”

10 276. Based on information and belief, DEFENDANTS have a policy and/or practice of
11 offering prospective employees, including Aggrieved Employees a higher compensation and
12 commission that is misleading as it falsely represents the compensation or commission that will be
13 earned during employment, as the actual compensation or commission earned is lower than that
14 which is offered to induce employment or continued employment. Such a practice or policy is in
15 violation of Labor Code section 976.

16 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

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

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

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

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

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

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

24 Unlawful Inquires into Criminal History

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

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

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

11 Unlawful PAGA Waiver

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

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

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

27 290. Upon information and belief, DEFENDANTS required PLAINTIFF and other
28 Aggrieved Employees to agree in writing to waive their right to a trial of PAGA claims in violation

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

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

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

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

10 293. Labor Code section 6401 provides as follows:

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

15 295. Labor Code section 6402 prohibits the following:

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

18 297. Similarly, Labor Code section 6404 provides as follows:

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

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

23 300. No employer shall fail or neglect to do any of the following:

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

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

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

1 of employees.

2 304. Similarly, Labor Code section 6406(d) states the following:

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

5 306. Finally, Labor Code section 6407 provides:

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

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

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

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

1 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
2 conditions between PLAINTIFF and/or other Aggrieved Employees.

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

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

27 313. At all relevant times, DEFENDANTS had and have a policy and practice of failing
28 within one business day after DEFENDANTS or a representative of DEFENDANTS received a

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

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

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

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

1 California and local laws.

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

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

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

13 320. Under the provisions of PAGA and the above mentioned Labor Code sections,
14 including but not limited to Labor Code sections 201-203, 204, 205, 206, 208, 212, 213(d), 216,
15 221-223, 226, 226.2, 226.7, 227, 227.3, 245-248.6, 351, 353, 432, 432.5, 432.7, 510, 512, 558,
16 558.1, 970, 976, 1021.5, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2441, 2751, 2802,
17 2810.5, 6400-6404, 6406-6407, 6409.6 and all applicable Wage Orders as well as all interpretations
18 of these laws by California Courts and administrative bodies, as well as any other law that is
19 enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

1 321. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
2 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 1, 2023

CROSNER LEGAL, PC

By: 
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