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By _____, Deputy
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on behalf of the State of California,
9 and others similarly situated and aggrieved

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SACRAMENTO**

12 MICHELLE THOMAS, on behalf of the
13 State of California, and others similarly
situated and aggrieved,

14 Plaintiff,

15
16 v.

17 ELK GROVE MOTORS, INC., a California
18 Corporation; SELMA MOTORS, INC., a
California Corporation; SELMA AUTO
19 MALL, INC., a California Corporation;
SELMA AUTO MALL III, INC., a
20 California Corporation; and DOES 1-100,
inclusive,

21 Defendants.
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Case No.:

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

BY FAX

1 Plaintiff, MICHELLE THOMAS (“PLAINTIFF”), an individual on behalf of PLAINTIFF,
2 the State of California, and all other Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants ELK GROVE MOTORS, INC., a California Corporation; SELMA
4 MOTORS, INC., a California Corporation; SELMA AUTO MALL, INC., a California Corporation;
5 SELMA AUTO MALL III, INC., a California Corporation; and DOES 1-100, inclusive,
6 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
7 thereon alleges as follows:

8 **INTRODUCTION**

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

14 **JURISDICTION AND VENUE**

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

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

23 **THE PARTIES**

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

26 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
27 DEFENDANTS as a non-exempt employee with a job title of service writer or a similar title from
28 in or around February 2022 through in or around August 2022. PLAINTIFF worked for

1 DEFENDANTS at DEFENDANTS' Elk Grove, California locations(s).

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

5 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
6 automobile dealership and/or other location(s) in California, including but not limited to the
7 automobile dealership in Elk Grove, California. DEFENDANTS operate several locations in
8 California and sell several vehicle brands. DEFENDANTS, through their various dealerships/other
9 locations serves the automotive sales industry.

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

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

26 **JOINT LIABILITY**

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

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

24 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
25 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
26 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
27 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
28 policies and practices regardless of the location(s) where they worked. Among other things,

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

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

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

1 the same principal place of business at 3400 McCall Avenue, Suite 100, Selma California, 93662
2 and/or share the same agent for service of process as provided to the California Secretary of State.
3 Moreover, documents in PLAINTIFF's personnel file identify any one or more of the following
4 entities as the employing entity: Elk Grove Motors, Selma Motors, Selma Auto Mall III, and/or
5 Selma Auto Mall.

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

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

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

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

23 **PAGA ALLEGATIONS**

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

27 All current and former non-exempt employees that worked either
28 directly or via a staffing agency for any one or more of the

1 DEFENDANTS at any location in California at any time from one
2 year plus 65 days from the filing of the initial Complaint through the
3 present (“PAGA Period”).

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

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

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

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

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

26 **FACTUAL ALLEGATIONS**

27 24. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
28 worked for DEFENDANTS in the State of California. At all times referenced herein,

1 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
2 permitted them to work.

3 25. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFFS worked for
4 DEFENDANTS as a non-exempt employee with a job title of, service writer or a similar title from
5 in or around February 2022 through in or around August 2022. PLAINTIFF worked for
6 DEFENDANTS at DEFENDANTS' Elk Grove, California location(s). PLAINTIFF regularly
7 worked 9-12 hours, at least 5-6 days per week. DEFENDANTS paid PLAINTIFF an hourly rate for
8 time counted by DEFENDANTS as hours worked.

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

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

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

24 29. Based on information and belief, Aggrieved Employees were not paid for all hours
25 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
26 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
27 the clock work policies and/or practices.

28 30. For example, based on information and belief, DEFENDANTS required the

1 Aggrieved Employees to spend significant time off-the-clock familiarizing themselves with new
2 vehicles and their features, and were required to take a graded quiz and review the responses. Based
3 on information and belief, the Aggrieved Employees, including PLAINTIFF, would spend
4 anywhere from 45 minutes to 2 hours off-the-clock and after business hours, on a weekly and/or
5 monthly basis on the aforementioned process. Additionally, based on information and belief,
6 PLAINTIFF and the Aggrieved Employees were required to communicate with customers and
7 DEFENDANTS's managerial staff during off-the-clock during after hours as well while clocked out
8 for their meal breaks. PLAINTIFF and the Aggrieved Employees were required by DEFENDANTS
9 to consistently perform work-related tasks during their meal breaks, such as customer
10 communications and customer and staff meetings. Based on information and belief, PLAINTIFF
11 also alleges that DEFENDANTS would unlawfully edit the clock in and out times for her and other
12 Aggrieved Employees' meal periods in order to display a thirty minute off-duty meal period,
13 notwithstanding the fact that DEFENDANTS had knowledge that it had required PLAINTIFF and
14 other Aggrieved Employees to perform work-related tasks during her meal period.

15 31. For example, based on information and belief, DEFENDANTS required Aggrieved
16 Employees to be at their assigned workstations at the start of a scheduled shift, thereby forcing
17 Aggrieved Employees to gather work-related equipment/tools and/or safety gear prior to their
18 scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock
19 work.

20 32. Based on information and belief, DEFENDANTS also failed to compensate
21 Aggrieved Employees for post-shift off-the-clock work, such as but not limited to, returning tools
22 and/or equipment to DEFENDANTS' dealership(s), lots, facilities, offices and/or other locations,
23 performing maintenance or cleaning-related tasks and/or completing other work tasks.

24 33. Based on information and belief, DEFENDANTS did not compensate Aggrieved
25 Employees for all time spent donning and doffing personal protective equipment, safety equipment
26 and/or uniforms/work clothing (e.g., gloves, and/or face masks) during meal periods, before the start
27 of a scheduled shift, and after completing a scheduled shift.

28 34. Based on information and belief, DEFENDANTS suffered, permitted, explicitly

1 instructed and/or otherwise required other Aggrieved Employees to perform additional pre-shift
2 and/or post-shift off-the-clock work, such as but not limited to, contacting prospective customers,
3 completing paperwork and/or data entry, making and/or responding to work-related
4 communications and/or completing other off-the-clock work tasks that were neither recorded nor
5 compensated, resulting in DEFENDANTS' failure to pay Aggrieved Employees for all hours
6 worked and the underpayment of minimum wages and overtime wages owed to Aggrieved
7 Employees.

8 35. Based on information and belief, at times, Aggrieved Employees were required to
9 complete other work tasks outside of their reported work time, before clocking in for the start of
10 their shift and/or after clocking out for the end of their shift and/or otherwise outside of their
11 scheduled shift times resulting in DEFENDANTS' failure to compensate Aggrieved Employees for
12 all hours worked and the underpayment of minimum wages and overtime wages to Aggrieved
13 Employees. For example, based on information and belief, Aggrieved Employees were required to
14 complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-
15 related phone calls and/or messages they received to their personal phones and were required to
16 respond to, including but not limited to, communications from supervisors and/or other employees
17 regarding scheduling and/or other work tasks, resulting in the underpayment of minimum and
18 overtime wages owed to Aggrieved Employees.

19 36. Moreover, based on information and belief, at times, DEFENDANTS'
20 electronic/computer time-keeping system/app malfunctioned such that Aggrieved Employees were
21 required to either reinitiate and/or otherwise troubleshoot the system and/or wait for the system to
22 boot prior to being able to clock in and/or were unable to clock in at all for the start of their shifts
23 and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of
24 wages owed to Aggrieved Employees. Based on information and belief, Aggrieved Employees
25 experienced the same issues when clocking out for shifts and/or back in for meal periods. This time
26 spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid
27 minimum wages owed to Aggrieved Employees.

28 37. Based on information and belief, DEFENDANTS required Aggrieved Employees to

1 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
2 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

3 38. Based on information and belief, at times, DEFENDANTS instituted a piece-rate-
4 based compensation scheme that resulted in pay periods during which Aggrieved Employees were
5 denied the minimum wage for all hours worked. For example, on information and belief, at times,
6 DEFENDANTS paid Aggrieved Employees on a strictly piece-rate basis (e.g., per repair/service job
7 and/or using a flagged hour basis) and/or on a strictly commission basis, at least during some pay
8 periods, during the relevant time period. However, based on information and belief, DEFENDANTS
9 failed to separately compensate Aggrieved Employees for all non-piece rate related and/or non-sales
10 generating activities/all non-productive time, including but not limited to, all rest breaks and/or time
11 spent preparing/setting up for jobs, time spent completing paperwork, waiting between jobs and
12 tasks and/or other waiting time, and/or performing work duties that otherwise fall outside of the
13 piece-rate pay criteria. DEFENDANTS' failure to separately compensate Aggrieved Employees for
14 their rest periods and/or other non-productive time and/or failure to compensate them at the correct
15 rates for all non-productive time including rest periods resulted in the failure to pay Aggrieved
16 Employees for all hours worked and violations of California wage and hour laws, including but not
17 limited to, Labor Code sections 226.2 and/or 1197. Based on information and belief,
18 DEFENDANTS further failed to include this information on these employees' wage statements
19 required by Labor Code section 226.2.

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

25 40. Based in information and belief, DEFENDANTS implemented a time-rounding
26 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
27 compensable time because the time-rounding system implemented by DEFENDANTS would
28 almost always, if not always, result in understating actual compensable work time.

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

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

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

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

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

1 completely. For example, based on information and belief, PLAINTIFF was forced to take late meal
2 periods in order to complete assigned job duties. PLAINTIFF was required to meet with customers
3 in person, as well as communicate with customers by text message and phone during her scheduled
4 meal periods on a weekly basis. As a result, PLAINTIFF was at times, interrupted during purported
5 meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises due
6 to the need to continue assigned job duties. Additionally, PLAINTIFF alleges that her supervisor
7 would regularly edit or otherwise adjust her time clock to reflect uninterrupted, complaint 30-minute
8 meal periods, notwithstanding the fact that her supervisor was aware that she was required to
9 perform work-related tasks during that time.

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

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

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

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

28 50. Moreover, based on information and belief, Aggrieved Employees who worked shifts

1 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

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

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

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

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

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

27 56. PLAINTIFF and other Aggrieved Employees were not adequately informed,
28 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California

1 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
2 the taking or timing of duty-free rest periods.

3 57. Based on information and belief, DEFENDANTS did not have a have a compliant
4 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
5 practice. For example, based on information and belief, PLAINTIFF was at times, unable to take
6 compliant rest periods due to PLAINTIFF's need to complete assigned job duties and/or was unable
7 to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted
8 to DEFENDANTS' premises.

9 58. 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 59. 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 60. 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 61. 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 62. 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 63. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC

1 Wage Orders, including but not limited to Wage Order 4, employees shall be provided with suitable
2 resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be
3 provided in an area separate from the toilet rooms and shall be available to employees during work
4 hours.”

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

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

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

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

27 68. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
28 Employees that also failed to indicate the earned gross and net wages earned during the pay period,

1 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
2 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
3 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
4 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
5 other off-the-clock work policies and practices described above) which results in a violation of
6 Labor Code section 226(a).

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

10 70. Based on information and belief, DEFENDANTS issued wage statements that failed
11 to list the number of non-discretionary bonuses and/or commissions earned and/or failed to list the
12 applicable rate for each non-discretionary bonus and/or commission earned. Instead, based on
13 information and belief, wage statements issued by DEFENDANTS either fail to list and/or identify
14 all earned bonuses/commissions and/or list the total amount of non-discretionary bonuses and/or
15 commissions earned without listing the number of bonuses/commissions and/or the rate for each
16 bonus and/or commission, thereby making it impossible for Aggrieved Employees to know whether
17 they received all owed non-discretionary compensation.

18 71. Based on information and belief, wage statements issued by DEFENDANTS failed
19 to list all applicable hourly rates in effect during the pay period and the corresponding number of
20 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
21 Code section 226(a)(9). For example, based on information and belief, DEFENDANTS' wage
22 statements issued to Aggrieved Employees do not provide an accurate overtime rate(s) because they
23 do not list overtime rate(s) of pay at 1.5 times the regular rate(s) of pay and instead list at least two
24 separate overtime rates of pay and/or list an overtime rate of pay that does not take into account all
25 non-discretionary compensation earned during the pay period, thereby failing to list all applicable
26 hourly rates in effect during the pay period and the corresponding number of hours worked at each
27 hourly rate, in violation of including but not limited to, Labor Code section 226(a)(9).

28 72. Moreover, based on information and belief, DEFENDANTS issued wage statements

1 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among
2 other things, failing to list the correct name and/or address of the legal entity that is the employer,
3 in violation of Labor Code section 226(a)(8).

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

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

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

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

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

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

1 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
2 counsel, sent a written request for payroll and personnel records to DEFENDANTS. Yet,
3 DEFENDANTS failed to timely produce complete records within the time periods delineated by
4 California labor law, including but not limited to, wage statements and/or time records. Based on
5 information and belief, DEFENDANTS failed and continues to fail to timely produce complete
6 payroll and personnel records when requested by other Aggrieved Employees. Based on information
7 and belief, DEFENDANTS failed and continue to fail to timely produce complete time, pay, and
8 personnel records when requested by other Aggrieved Employees.

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

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

23 **81. Violation of Labor Code section 976:** Labor Code section 976 provides that "No
24 person shall publish or cause to be published any advertisement, solicitation or communication in
25 any newspaper, poster, or letter, offering employment as a salesman, broker or agent whether as an
26 employee or independent contractor, which advertisement, solicitation or communication (a) is
27 willfully designed to mislead any person as to compensation or commissions which may be earned;
28 or (b) falsely represents the compensation or commissions which may be earned."

1 82. Based on information and belief, DEFENDANTS have a policy and/or practice of
2 offering prospective employees, including Aggrieved Employees, a higher compensation and
3 commission that is misleading as it falsely represents the compensation or commission that will be
4 earned during employment, as the actual compensation or commission earned is lower than that
5 which is offered to induce employment or continued employment. Such a practice or policy is in
6 violation of Labor Code section 976.

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

12 84. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
13 Aggrieved Employees who were compensated on a commission basis with proper written
14 commission agreements, in violation of Labor Code section 2751.

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

27 86. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
28 Employees who were paid solely on a piece rate and/or commission basis separately for the rest

1 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
2 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
3 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
4 226.2.

5 87. **Unreimbursed Business Expenses.** Based on information and belief,
6 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
7 as a direct consequence of the performance of their job duties without providing reimbursement, in
8 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
9 Aggrieved Employees were improperly required to provide and maintain work tools that are
10 supposed to be the responsibility of the employer.

11 88. Based on information and belief, DEFENDANTS shifted the costs of doing business
12 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
13 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
14 including but not limited to including but not limited to, uniforms, work clothing/shoes, protective
15 equipment/safety gear and/or the use of Aggrieved Employees personal mobile phone and data
16 usage for work-related purposes, including but not limited to, receiving and responding to work
17 related messages and/or phone calls.

18 89. For example, based on information and belief, Aggrieved Employees received work-
19 related calls/messages to their personal phones from managers and/or supervisors and/or customers
20 and/or prospective customers and/or other Aggrieved Employees regarding scheduling and other
21 work tasks without being provided any and/or full reimbursement from DEFENDANTS for these
22 business expenses. For example, PLAINTIFF was required to communicate with DEFENDANTS'
23 customers throughout her shift by using her personal cellphone. This was typically to inform
24 customers on the various updates pertaining to the work being performed on their vehicles.
25 PLAINTIFF was also required to communicate via text message with her customers both after hours
26 and on the weekends. DEFENDANTS did not provide PLAINTIFF with any reimbursement for
27 these business expenses.

28 90. Based on information and belief, Aggrieved Employees were required to purchase

1 and/or maintain their own hand tools/equipment required to perform their assigned job duties
2 without being provided any and/or full reimbursement from DEFENDANTS for these business
3 expenses. For example, PLAINTIFF was required to supply most if not all of his own hand tools
4 and/or equipment required to perform the duties of his job, yet DEFENDANTS did not provide
5 PLAINTIFF with any reimbursement for these business expenses. For example, DEFENDANTS
6 required PLAINTIFF and other Aggrieved Employees working as sales associates and/or other
7 similar title(s) and/or position(s) to use their personal cell phones to communicate with customers
8 and prospective customers without providing any and/or full reimbursement for these business
9 expenses.

10 91. Furthermore, based on information and belief, Aggrieved Employees also at times
11 were required to use and did use personal devices to perform work duties at home/remotely, such
12 as, but not limited to, reviewing and/or completing work-related paperwork and/or other documents
13 as mandated by DEFENDANTS, however DEFENDANTS failed to provide reimbursement and/or
14 full reimbursement for expenses Aggrieved Employees incurred as a result of working for
15 DEFENDANTS remotely and/or from their homes, including but not limited to, cost of internet
16 service, home electricity, cost of additional memory and/or virus software for home computer /
17 home computer use, among other business expenses associated with remote work required by
18 DEFENDANTS. For example, DEFENDANTS required PLAINTIFF and other Aggrieved
19 Employees to log into DEFENDANTS' company system after hours using their personal devices to
20 complete trainings, quizzes and/or perform other work tasks using their personal devices without
21 providing any and/or full reimbursement for the costs incurred in connection with this remote work
22 and/or use of their personal devices for DEFENDANTS' business purposes.

23 92. Additionally, based on information and belief, at times, Aggrieved Employees were
24 not reimbursed for the business use of their personal vehicles, including but not limited to, mileage,
25 vehicle wear and tear, and/or cost of fuel when they were required to drive between and/or around
26 DEFENDANTS' locations, offices, dealerships and/or facilities and/or otherwise use their personal
27 vehicles to perform their job duties, including but not limited to, to perform business errands for
28 DEFENDANTS. As such, DEFENDANTS failed to compensate Aggrieved Employees at the

1 Internal Revenue Service (IRS) mandated per mile compensation rate for the relevant period.

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

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

11 95. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
12 provides as follows:

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

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

26 98. Based on information and belief, DEFENDANTS have a policy and practice of
27 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
28 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to

1 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
2 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

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

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

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

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

1 used sick leave and the balance of paid sick leave.

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

8 104. 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.

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

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

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

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

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

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

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

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

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

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

26 113. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
27 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
28 were due and owing upon termination or resignation. Based on information and belief,

1 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
2 requirements of Labor Code sections 201-202.

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

10 115. For example, based on information and belief, PLAINTIFF's last day worked was
11 on or about August 1, 2022. However, PLAINTIFF's wage statement indicates that she was not paid
12 her final paycheck until August 10, 2022.

13 116. 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.

21 117. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

22 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

23 118. Based on information and belief, DEFENDANTS required Aggrieved Employees to
24 agree in writing to unlawful conditions of employment including but not limited to unlawful non-
25 solicitation/non-compete agreements, unlawful commissions agreements and/or compensation
26 plans, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers,
27 unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful
28 criminal and/or financial checks as a condition of obtaining and/or continuing employment in

1 violation of Labor Code section 432.5.

2 119. Unlawful Non-Compete/Non-Solicitation Agreements: Non-compete/non-
3 solicitation agreements are illegal under California law. See California Business & Professions Code
4 section 16600 – providing that any non-compete provision between an employer and an employee,
5 i.e., any contract that restrains a person from engaging in a profession, trade or business will not be
6 enforceable under California law. California Labor Code section 432.5 states that it is illegal for an
7 employer to require an employee to agree in writing to any term that the employer knows is illegal.
8 Violations of Section 432.5 are actionable under the California Labor Code Private Attorneys’
9 General Act (“PAGA”).

10 120. Based upon information and belief, DEFENDANTS required Aggrieved Employees
11 to sign unlawful non-compete/non-solicitation agreements as a condition of hire/maintaining
12 employment, in violation of California law, including but not limited to, California Business &
13 Professions Code section 16600. By having Aggrieved Employees sign off on the illegal non-
14 compete/non-solicitation agreements as a condition of employment, DEFENDANTS violated, inter-
15 alia, Labor Code section 432.5 (stating that “no employer...shall require any employee or applicant
16 for employment to agree, in writing, to any term or condition which is known by such employer...to
17 be prohibited by law.”). Accordingly, Aggrieved Employees are entitled to recover penalties,
18 attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

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

24 122. Based on information and belief, DEFENDANTS also required Aggrieved
25 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
26 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
27 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
28 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,

1 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
2 FCRA when conducting background screenings for applicants, including but not limited to
3 Aggrieved Employees that were subject to a background check as a condition of employment during
4 the application phase.

5 123. Based on information and belief, DEFENDANTS required Aggrieved Employees to
6 agree in writing to a background check which failed to abide by the requirements set forth in CA
7 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
8 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
9 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
10 the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,
11 failing to provide a way by which the individual could request a copy of the report, failing to disclose
12 the name, address, and telephone number of the third party preparing the report, and failing to
13 properly obtain authorization or consent to such a background check, and thus was an unlawful
14 background check. For example, DEFENDANTS included several extraneous pieces of information
15 in its background check disclosure, including but not limited to information relating to drug
16 screening and driving record checks.

17 124. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
18 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
19 section 432.5.

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

25 126. Based on further information and belief, DEFENDANTS knew that requiring
26 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
27 condition of obtaining and/or holding employment was unlawful.

28 127. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a

1 condition of employment, DEFENDANTS violated Labor Code section 432.5.

2 Unlawful Inquires into Criminal History

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

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

12 Unlawful PAGA Waiver

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

16 131. 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.”)

22 132. 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.’”)

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

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

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

8 **FIRST CAUSE OF ACTION**
9 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
10 **2698, *ET SEQ.***

11 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
12 **Defendants)**

13 135. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

14 **Failure to Keep Accurate Records**

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

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

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

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

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

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

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

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

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

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

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

7 **Meal Period Violations**

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

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

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

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

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

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

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

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

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

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

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

1 **Rest Period Violations**

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

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

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

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

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

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

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

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

20 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

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

11 **Minimum and Overtime Wage Violations**

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

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

25 166. As explained above, DEFENDANTS violated California's minimum and overtime
26 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
27 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
28 start and end times and meal period start and end times), payment according to scheduled hours

1 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during
2 meal periods, and/or other otherwise off-the-clock work (described above), and/or other unlawful
3 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

4 167. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
5 Aggrieved Employees for all hours worked.

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

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

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

23 171. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
24 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
25 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
26 Wage Orders, section 20.

27 **Violation of Labor Code section 976**

28 172. Labor Code section 976 provides that "No person shall publish or cause to be

1 published any advertisement, solicitation or communication in any newspaper, poster, or letter,
2 offering employment as a salesman, broker or agent whether as an employee or independent
3 contractor, which advertisement, solicitation or communication (a) is willfully designed to mislead
4 any person as to compensation or commissions which may be earned; or (b) falsely represents the
5 compensation or commissions which may be earned.”

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

12 **Failure to Provide Written Commission Agreements**

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

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

21 **Violation of Labor Code Section 226.2**

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

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

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

11 **Statutory Wage Violations**

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

23 **Refusal to Make Payment**

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

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

4 **Standard Conditions of Labor Violations**

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

13 **Business Expense Violations**

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

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

26
27 ² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

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

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

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

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

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

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

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

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

27 **Wage Statement Violations**

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

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

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

17 192. Based on information and belief, DEFENDANTS issued wage statements that failed
18 to list the number of piece rate units completed/earned during the pay period and the applicable rate
19 of pay for each piece rate unit.

20 193. Based on information and belief, DEFENDANTS issued wage statements that failed
21 to list the number of non-discretionary bonuses and/or commissions earned and/or failed to list the
22 applicable rate for each non-discretionary bonus and/or commission earned. Instead, based on
23 information and belief, wage statements issued by DEFENDANTS either fail to list and/or identify
24 all earned bonuses/commissions and/or list the total amount of non-discretionary bonuses and/or
25 commissions earned without listing the number of bonuses/commissions and/or the rate for each
26 bonus and/or commission, thereby making it impossible for Aggrieved Employees to know whether
27 they received all owed non-discretionary compensation.

28 194. Moreover, due to violations detailed above, including but not limited to,

1 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
2 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
3 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
4 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
5 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
6 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
7 compensation earned during the pay period into the regular rate of pay for purposes of calculating
8 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
9 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

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

27 199. DEFENDANTS' failure to accurately list all hours worked on all wage statements
28 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved

1 Employees over whether they received all wages owed to them.

2 200. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
3 they could not easily determine whether they received all wages owed to them and whether they
4 were paid for all hours worked.

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

8 202. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
9 Aggrieved Employees with accurate, itemized wage statements.

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

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

22 **Unlawful Deductions**

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

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

1 Section 2699.

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

8 **Reporting Time Pay Violations**

9 207. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

28 **Violation of California Day of Rest Law**

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

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

11 **Seating Violations**

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

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

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

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

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

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

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

6 218. The Aggrieved Employees worked in various positions. The nature of Aggrieved
7 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
8 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
9 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
10 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
11 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
12 separate civil penalty.

13 **Sick Leave Violations**

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

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

26 221. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
27 their paid sick leave at least prior to their respective separations, for as on several occasions
28 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate

1 compensation.

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

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

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

12 225. On information and belief, PLAINTIFF alleges that all of these practices were
13 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

26 228. California Labor Code section 227.3 provides that when an employer policy provides
27 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
28 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the

1 employee's final rate in accordance with such contract of employment or employer policy respecting
2 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
3 off upon termination.

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

9 **Untimely Payment of Final Wages**

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

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

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

1 233. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
2 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
3 256.

4 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

15 235. **Unlawful Non-Compete/Non-Solicitation Agreements**

16 236. Non-compete/non-solicitation agreements are illegal under California law. See
17 California Business & Professions Code section 16600 – providing that any non-compete provision
18 between an employer and an employee, i.e., any contract that restrains a person from engaging in a
19 profession, trade or business will not be enforceable under California law. California Labor Code
20 section 432.5 states that it is illegal for an employer to require an employee to agree in writing to
21 any term that the employer knows is illegal. Violations of Section 432.5 are actionable under the
22 California Labor Code Private Attorneys’ General Act (“PAGA”).

23 237. Based upon information and belief, DEFENDANTS required Aggrieved Employees
24 to sign unlawful non-compete/non-solicitation agreements as a condition of hire/maintaining
25 employment, in violation of California law, including but not limited to, California Business &
26 Professions Code section 16600. By having Aggrieved Employees sign off on the illegal non-
27 compete/non-solicitation agreements as a condition of employment, DEFENDANTS violated, inter-
28 alia, Labor Code section 432.5 (stating that “no employer...shall require any employee or applicant

1 for employment to agree, in writing, to any term or condition which is known by such employer...to
2 be prohibited by law.”). Accordingly, Aggrieved Employees are entitled to recover penalties,
3 attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

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

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

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

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

28 242. Based on further information and belief, DEFENDANTS knew that requiring

1 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
2 condition of obtaining and/or holding employment was unlawful.

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

5 Unlawful Inquires into Criminal History

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

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

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

20 Unlawful PAGA Waiver

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

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

1 (“We conclude that where, as here, an employment agreement compels the waiver of representative
2 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

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

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

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

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

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

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

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PRAYER FOR RELIEF

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

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

Dated: August 21, 2023

CROSNER LEGAL, PC

By: 
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