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10 on behalf of the State of California,
11 and others similarly situated and aggrieved

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

13 **COUNTY OF LOS ANGELES**

14 WALTER WALKER, on behalf of the State
15 of California, and others similarly situated
16 and aggrieved,

17 Plaintiff,

18 v.

19 PELICAN PRODUCTS, INC., a Delaware
20 Corporation; STAFFMARK INVESTMENT
21 LLC, a Delaware Limited Liability
22 Company; and DOES 1-100, inclusive,

23 Defendants.

Case No.: **23ST CV 19531**

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

1 Plaintiff, WALTER WALKER (“PLAINTIFF”), an individual on behalf of PLAINTIFF, the
2 State of California, and all other Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants PELICAN PRODUCTS, INC., a Delaware Corporation;
4 STAFFMARK INVESTMENT LLC, a Delaware Limited Liability Company; and DOES 1-100,
5 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
6 believes and thereon alleges as follows:

7 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
26 DEFENDANTS as a non-exempt employee with a job title of warehouse worker or a similar title
27 from in or around May 5, 2022 through in or around August or September, 2022. PLAINTIFF
28 worked for DEFENDANTS at DEFENDANTS’ Torrance, California locations(s).

6. DEFENDANTS are a Delaware Corporation and/or Delaware Limited Liability Company, that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

7. Defendant STAFFMARK INVESTMENT LLC, is a labor contractor and/or staffing agency that supplies workers to various industries and business including but not limited to PELICAN PRODUCTS, INC.

8. Defendant PELICAN PRODUCTS, INC., owns, operates, manages and/or staffs its employees to work at the warehouses and/or production facilities and/or other facilities and/or other location(s) in California, including but not limited to the warehouses and/or production facilities and/or other facilities in Torrance, California. PELICAN PRODUCTS, INC., through its various s/other locations serves the manufacturing and/or warehousing industry.

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

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

JOINT LIABILITY

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

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

25 13. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
26 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
27 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
28 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same

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

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

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

1 collectively would evaluate their wage rates.

2 16. Moreover, based on information and belief, STAFFMARK INVESTMENT LLC
3 hired PLAINTIFF and entered into a written employment agreement with PLAINTIFF. During
4 PLAINTIFF's employment, STAFFMARK INVESTMENT LLC maintained control over many
5 aspects of PLAINTIFF's employment, including, among other things, having the authority to
6 discipline PLAINTIFF, change PLAINTIFF's job assignment, change PLAINTIFF's work hours,
7 change PLAINTIFF's rates of pay, and to terminate PLAINTIFF's employment.

8 17. In addition, when PLAINTIFF was first hired, STAFFMARK INVESTMENT LLC
9 provided PLAINTIFF with orientation and training materials. STAFFMARK INVESTMENT LLC
10 issued PLAINTIFF written policies concerning meal periods, rest breaks, timekeeping, hours
11 worked, and payment of PLAINTIFF's wages, with which PLAINTIFF was required to comply.
12 Based on information and belief, among other things, these policies provided that PLAINTIFF's
13 weekly time records be submitted to STAFFMARK INVESTMENT LLC, and STAFFMARK
14 INVESTMENT LLC was supposed to process PLAINTIFF's time records and pay PLAINTIFF for
15 all hours worked. STAFFMARK INVESTMENT LLC exercised ultimate control over the payment
16 of PLAINTIFF's wages, as STAFFMARK INVESTMENT LLC issued PLAINTIFF his paychecks.

17 18. Finally, STAFFMARK INVESTMENT LLC directed PLAINTIFF to comply with
18 PELICAN PRODUCTS, INC.'s policies and directions. PLAINTIFF is informed and believes that
19 STAFFMARK INVESTMENT LLC exercised the same control over, applied the same policies and
20 practices, and engaged in the same acts and omissions with regard to the other Aggrieved
21 Employees.

22 19. PELICAN PRODUCTS, INC., similarly suffered or permitted PLAINTIFF to work
23 for them or engaged PLAINTIFF to work for them. PLAINTIFF is informed and believes that
24 PELICAN PRODUCTS, INC., entered into a written agreement with STAFFMARK
25 INVESTMENT LLC, pursuant to which PELICAN PRODUCTS, INC., paid STAFFMARK
26 INVESTMENT LLC to provide it with workers, including PLAINTIFF, to conduct PELICAN
27 PRODUCTS, INC.'s business operations. PELICAN PRODUCTS, INC., suffered or permitted
28 PLAINTIFF to work at PELICAN PRODUCTS, INC. during PLAINTIFF's employment.

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

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

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

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

PAGA ALLEGATIONS

24. PLAINTIFF brings this action under the PAGA, as a representative action on behalf of the State of California and all Aggrieved Employees, regarding violations of the California Labor Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include the following subcategories and are collectively referred to herein as “Aggrieved Employees”:

(1) all non-exempt workers who were directly employed by STAFFMARK INVESTMENT LLC regardless of where those non-exempt workers were assigned or staffed to work – in California at any time from one year plus 65 days from the filing of the initial Complaint through the present (“PAGA Period”);

(2) all non-exempt workers who were assigned/staffed to work at

1 PELICAN PRODUCTS, INC. by STAFFMARK INVESTMENT
2 LLC and/or any other staffing/temporary service agencies at any
3 location in California at any time from one year plus 65 days from the
4 filing of the initial Complaint through the present (“PAGA Period”);
5 and

6 (3) all non-exempt workers who were directly employed by
7 PELICAN PRODUCTS, INC. to work at any location in California at
8 any time from one year plus 65 days from the filing of the initial
9 Complaint through the present (“PAGA Period”).

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

21 26.

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

23 27. PLAINTIFF, on June 9, 2023, through counsel, gave written notice by online filing
24 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
25 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
26 in this Complaint (“PAGA Notice”).

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

1 Employees.

2 29. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
3 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
4 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
5 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
6 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
7 has duly accrued.

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

11 **FACTUAL ALLEGATIONS**

12 31. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
13 worked for DEFENDANTS in the State of California. At all times referenced herein,
14 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
15 permitted them to work.

16 32. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFFS worked for
17 DEFENDANTS as a non-exempt employee with a job title of, warehouse worker or a similar title
18 from in or around May 5, 2022 through in or around August or September 2022. PLAINTIFF
19 worked for DEFENDANTS at DEFENDANTS' Torrance, California location(s). PLAINTIFF
20 regularly worked at least eight (8) hours per day and typically working at least eight and one-half
21 hours (8 /12) to nine (9) hours at least two (2) to three (3) days per week. DEFENDANTS paid
22 PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked.

23 33. PLAINTIFF was staffed by STAFFMARK INVESTMENT LLC to work at
24 including but not limited to, PELICAN PRODUCTS, INC.

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

27 35. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
28 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of

1 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
2 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
3 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
4 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
5 below.

6 36. Based on information and belief, DEFENDANTS implemented a policy and/or
7 practice of rounding meal period start and end times and/or automatically deducting at least thirty
8 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
9 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
10 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
11 PLAINTIFF and Aggrieved Employees of all wages owed. For example, as explained above,
12 Aggrieved Employees, including but not limited to, PLAINTIFF, were frequently required to clock
13 out for purported meal periods but to continue working due to the need to complete assigned job
14 duties, resulting in consistent off-the-clock work and the underpayment of minimum wages and
15 overtime wages owed to PLAINTIFF and other Aggrieved Employees.

16 37. Based on information and belief, Aggrieved Employees were not paid for all hours
17 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
18 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
19 the clock work policies and/or practices. For example, PLAINTIFF and other Aggrieved Employees
20 were consistently required to perform pre-shift and/or post-shift off-the-clock work that was neither
21 recorded nor compensated resulting in the underpayment of wages owed to PLAINTIFF and other
22 Aggrieved Employees. For example, based on information and belief, Aggrieved Employees were
23 required to complete other off-the-clock work tasks after clocking out for the end of their shifts
24 and/or during uncompensated meal periods, resulting in off-the-clock work and the underpayment
25 of minimum and overtime wages owed to Aggrieved Employees.

26 38. For example, based on information and belief, on most if not all days during the
27 relevant period, DEFENDANTS required Aggrieved Employees to clock out for the end of their
28 shifts but to continue working due to the need to return/maintain tools, clean and/or organize their

1 work stations/areas, provide shift status updates and/or debriefings and/or participate in work
2 meetings, respond to work-related communications and/or perform other work tasks off-the-clock,
3 resulting in the underpayment of minimum wages and overtime wages owed to Aggrieved
4 Employees.

5 39. For example, after clocking out for the end of his shifts, PLAINTIFF was usually if
6 not always required to clean his workstation for the next shift worker and/or complete other off-the-
7 clock work tasks, resulting in DEFENDANTS' failure to pay PLAINTIFF for all work time and the
8 consistent underpayment of minimum wages and overtime wages owed to PLAINTIFF.

9 40. Based on information and belief, DEFENDANTS required Aggrieved Employees to
10 be at their assigned workstations at the start of a scheduled shift, thereby forcing Aggrieved
11 Employees to gather work-related equipment and/or safety gear prior to their scheduled shift and/or
12 prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock work. For example, prior
13 to clocking in for the start of PLAINTIFF's shifts, PLAINTIFF was required to first unbox and/or
14 unpack work-related equipment PLAINTIFF was required to use during his work shifts. This time
15 spent under DEFENDANTS' control, including but not limited to, time spent unboxing and/or
16 unpacking work-related equipment was not recorded and not compensated resulting in
17 DEFENDANTS' failure to pay PLAINTIFF for all hours worked, and the consistent underpayment
18 of minimum wages and overtime wages owed to PLAINTIFF.

19 41. Based on information and belief, Aggrieved Employees were required to compile
20 tools and/or equipment, set up and/or clean their workstations prior to clocking in for the start of
21 their shifts resulting in DEFENDANTS' failure to pay Aggrieved Employees for all work time and
22 the underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

23 42. Based on information and belief, DEFENDANTS required Aggrieved Employees to
24 undergo security screenings before and/or after a scheduled shift and/or before or after clocking
25 in/out for work, resulting in pre-shift and/or post-shift off-the-clock work. Based on information
26 and belief, at times, Aggrieved Employees were required to wait in line behind other Aggrieved
27 Employees to access DEFENDANTS' time-keeping computer system and/or terminal and/or were
28 required to spend time initiating, booting up and/or logging onto DEFENDANTS' electronic

1 systems so they could then clock in for the start of their shifts which said time spent under
2 DEFENDANTS' control, including but not limited to, waiting time and/or time spent initiating,
3 booting up and/or logging into DEFENDANTS' computer/electronic time keeping system, was
4 neither recorded nor compensated, resulting in off-the-clock work and violations of California's
5 minimum wage laws, overtime wage laws, among other violations of the Labor Code described
6 herein.

7 43. Based on information and belief, DEFENDANTS required Aggrieved Employees to
8 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
9 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.
10 Based on information and belief, DEFENDANTS did not compensate Aggrieved Employees for
11 time spent donning and doffing personal protective equipment, safety equipment and/or uniforms
12 (e.g., safety goggles/glasses, gloves, and/or face masks) during meal periods, before the start of a
13 scheduled shift, and after completing a scheduled shift.

14 44. PLAINTIFF and other Aggrieved Employees were required to perform other off-the-
15 clock work for which they were not compensated. For example, based on information and belief,
16 at times, DEFENDANTS' electronic employee time-keeping system/app malfunctioned such that
17 Aggrieved Employees were required to either reinitiate and/or otherwise troubleshoot the system
18 prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or
19 clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages
20 owed to Aggrieved Employees.

21 45. Based on information and belief, Aggrieved Employees experienced the same issues
22 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
23 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
24 Aggrieved Employees.

25 46. Based on information and belief, Aggrieved Employees were required to complete
26 off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they
27 received to their phones/mobile devices and were required to respond to, including but not limited
28 to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the

1 underpayment of wages owed to Aggrieved Employees.

2 47. Based on information and belief, DEFENDANTS failed to pay Aggrieved
3 Employees split shift premium wages when they worked split shifts during the relevant period. For
4 example, based on information and belief, at times, DEFENDANTS required Aggrieved Employees
5 to work two separate shifts in the same day.

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

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

27 50. Based in information and belief, DEFENDANTS implemented a time-rounding
28 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of

1 compensable time because the time-rounding system implemented by DEFENDANTS would
2 almost always, if not always, result in understating actual compensable work time.

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

9 52. For example, PLAINTIFF regularly worked more than eight hours in a day and/or
10 more than forty (40) hours in a week but was not paid a premium wage rate for all hours worked
11 beyond eight (8) hours in a day and/or beyond forty (40) hours in a week, including but not limited
12 to, for time counted by DEFENDANTS as hours worked.

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

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

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

27 56. Additionally, DEFENDANTS also violated California's overtime laws as to those
28 Aggrieved Employees, including PLAINTIFF that were subject to an Alternative Workweek

1 Schedule (AWS).

2 57. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
3 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
4 and/or implemented in accordance with the requirements of California law and/or DEFENDANTS
5 failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws,
6 including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor
7 Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an
8 AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

9 58. (C) Election Procedures Election procedures for the adoption
10 and repeal of alternative workweek schedules require the following:
11 (1) Each proposal for an alternative workweek schedule shall be in
12 the form of a written agreement proposed by the employer. The
13 proposed agreement must designate a regularly scheduled alternative
14 workweek in which the specified number of workdays and work hours
15 are regularly recurring. The actual days worked within that alternative
16 workweek schedule need not be specified. The employer may propose
17 a single work schedule that would become the standard schedule for
18 workers in the work unit, or a menu of work schedule options, from
19 which each employee in the unit would be entitled to choose. If the
20 employer proposes a menu of work schedule options, the employee
21 may, with the approval of the employer, move from one menu option
22 to another. (2) In order to be valid, the proposed alternative workweek
23 schedule must be adopted in a secret ballot election, before the
24 performance of work, by at least a two-thirds (2/3) vote of the affected
25 employees in the work unit. The election shall be held during regular
26 working hours at the employees' work site. For purposes of this
27 subsection, "affected employees in the work unit" may include all
28 employees in a readily identifiable work unit, such as a division, a

1 department, a job classification, a shift, a separate physical location,
2 or a recognized subdivision of any such work unit. A work unit may
3 consist of an individual employee as long as the criteria for an
4 identifiable work unit in this subsection is met. (3) Prior to the secret
5 ballot vote, any employer who proposed to institute an alternative
6 workweek schedule shall have made a disclosure in writing to the
7 affected employees, including the effects of the proposed
8 arrangement on the employees' wages, hours, and benefits. Such a
9 disclosure shall include meeting(s), duly noticed, held at least 14 days
10 prior to voting, for the specific purpose of discussing the effects of
11 the alternative workweek schedule. An employer shall provide that
12 disclosure in a non- English language, as well as in English, if at least
13 five (5) percent of the affected employees primarily speak that non-
14 English language. The employer shall mail the written disclosure to
15 employees who do not attend the meeting. Failure to comply with this
16 paragraph shall make the election null and void. (4) Any election to
17 establish or repeal an alternative workweek schedule shall be held at
18 the work site of the affected employees. The employer shall bear the
19 costs of conducting any election held pursuant to this section. Upon a
20 complaint by an affected employee, and after an investigation by the
21 Labor Commissioner, the Labor Commissioner may require the
22 employer to select a neutral third party to conduct the election. (5)
23 Any type of alternative workweek schedule that is authorized by the
24 Labor Code may be repealed by the affected employees. Upon a
25 petition of one-third (1/3) of the affected employees, a new secret
26 ballot election shall be held and a two-thirds (2/3) vote of the affected
27 employees shall be required to reverse the alternative workweek
28 schedule. The election to repeal the alternative workweek schedule

1 shall be held not more than 30 days after the petition is submitted to
2 the employer, except that the election shall be held not less than 12
3 months after the date that the same group of employees voted in an
4 election held to adopt or repeal an alternative workweek schedule.
5 The election shall take place during regular working hours at the
6 employees' work site. If the alternative workweek schedule is
7 revoked, the employer shall comply within 60 days. Upon proper
8 showing of undue hardship, the Division of Labor Standards
9 Enforcement may grant an extension of time for compliance. (6) Only
10 secret ballots may be cast by affected employees in the work unit at
11 any election held pursuant to this section. The results of any election
12 conducted pursuant to this section shall be reported by the employer
13 to the Office of Policy, Research and Legislation within 30 days after
14 the results are final, and the report of election results shall be a public
15 document. The report shall include the final tally of the vote, the size
16 of the unit, and the nature of the business of the employer. (7)
17 Employees affected by a change in the work hours resulting from the
18 adoption of an alternative workweek schedule may not be required to
19 work those new work hours for at least 30 days after the
20 announcement of the final results of the election. (8) Employers shall
21 not intimidate or coerce employees to vote either in support of or in
22 opposition to a proposed alternative workweek.

23 59. No employees shall be discharged or discriminated against for
24 expressing opinions concerning the alternative workweek election or
25 for opposing or supporting its adoption or repeal. However, nothing
26 in this section shall prohibit an employer from expressing his/her
27 position concerning that alternative workweek to the affected
28

employees. A violation of this paragraph shall be subject to Labor Code § 98 *et seq.*

60. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to comply with the above procedures, and thus, failed to properly institute an alternative workweek for the purpose of obtaining a lawful exemption from overtime premiums for its mandated 10-hour/4-day schedule. Based on information and belief, DEFENDANTS also failed to report the results to the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the purported election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage Orders. These violations subject employer to civil penalties under Labor Code §§ 558 and 2699, and All Applicable Wage Orders. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.

61. Moreover, to the extent there was an AWS that was properly adopted, DEFENDANTS violated California's overtime laws as to Aggrieved Employees that were subject to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is required to work the reduced hours." *See* Section 3 of all applicable Wage Orders. Based on information and belief, at times during Aggrieved Employees' respective employments by DEFENDANTS, Aggrieved Employees worked subject to an alternative work week schedule in which they worked nine (9) hours per shift, four (4) shifts per week. Based on information and belief, at times, Aggrieved Employees that were subject to an AWS, were sent home early and/or worked less hours than those that were scheduled under the AWS. On such shortened shifts, Aggrieved Employees were entitled to overtime pay at 1.5 times the regular rate of pay after the first eight hours of work. Instead, DEFENDANTS paid Aggrieved Employees their base rate for all

1 hours worked on the shortened shift(s) in violation of the alternative workweek schedule, and in
2 violation of California Labor Code section 510, the applicable Wage Order, and Labor Code section
3 1198. As such, Aggrieved Employees that were subject to an AWS were also deprived of all owed
4 overtime wages when required to work shortened shifts.

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

21 **63.** Based on information and belief, other Aggrieved Employees were consistently
22 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
23 interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing,
24 the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and
25 expectations.

26 **64.** Based on information and belief, DEFENDANTS implemented policies and/or
27 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
28 during unpaid meal periods.

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

5 66. Based on information and belief, despite DEFENDANTS' failure to provide lawful
6 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
7 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
8 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
9 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
10 Employees did not receive lawful meal periods.

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

13 68. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
14 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
15 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
16 did DEFENDANTS have any sort of compliant policy in practice.

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

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

27 71. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
28 additional hour of wages at their respective regular rates of compensation for each workday a lawful

1 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
2 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
3 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
4 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
5 compensation for purposes of calculating the owed meal period premium.

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

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

14 **74.** Based on information and belief, DEFENDANTS did not have a have a compliant
15 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
16 practice. For example, based on information and belief, PLAINTIFF and other Aggrieved
17 Employees were at times unable to take compliant rest periods due to their need to complete assigned
18 job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had
19 purported rest periods restricted to DEFENDANTS' premises.

20 **75.** Based on information and belief, any purported rest periods were interrupted, cut
21 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of
22 their job duties, and/or commentary from supervisors pressuring them to skip rest periods
23 completely and/or take non-compliant rest periods.

24 **76.** Moreover, based on information and belief, DEFENDANTS failed to provide any
25 form of a third rest period on shifts lasting longer than ten hours.

26 **77.** Based on information and belief, DEFENDANTS implemented policies and/or
27 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
28 DEFENDANTS' control during rest periods.

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

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

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

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

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

27 83. DEFENDANTS’ failure to provide suitable resting facilities to PLAINTIFF and
28 Aggrieved Employees violated and continue to violate the applicable Wage Order, section 13(B)

1 and the California Labor Code, including but not limited to section 1198.

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

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

18 86. 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 87. 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 88. 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 89. 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 90. 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 91. 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 92. **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
19 deducting costs of uniforms and/or other business costs and/or deducting wages for purported
20 overpayments from previous pay periods. Such a practice is in violation of including but not limited
21 to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor
22 Code Section 2699.

23 93. **Failure to Produce Employment Records.** Based on information and belief,
24 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
25 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
26 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF sent a
27 written request for payroll and personnel records to DEFENDANTS. Yet, DEFENDANTS failed to
28 timely produce complete records within the time periods delineated by California labor law. Based

1 on information and belief, DEFENDANTS failed and continues to fail to timely produce complete
2 payroll and personnel records when requested by other Aggrieved Employees. Based on information
3 and belief, DEFENDANTS failed and continue to fail to timely produce complete time, pay, and
4 personnel records when requested by other Aggrieved Employees.

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

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

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

1 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to
2 employees compensated on a commission basis.

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

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

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

22 100. For example, PLAINTIFF was required to purchase gloves and/or other uniforms
23 and/or work clothing and/or personal protective/safety gear DEFENDANTS required PLAINTIFF
24 wear for work, yet DEFENDANTS did not reimburse PLAINTIFF for these business expenses.
25 Based on information and belief, Aggrieved Employees were required to receive and respond to
26 work-related calls and/or messages from supervisors and/or other Aggrieved Employees regarding
27 scheduling and/or other work tasks but were not reimbursed by DEFENDANTS at all and/or in full
28 for these business expenses.

1 101. Based on information and belief, DEFENDANTS failed to reimburse Aggrieved
2 Employees for expenses associated with having to purchase and/or maintain their own hand tools
3 and/or equipment required to perform their assigned job duties. For example, PLAINTIFF was
4 required to purchase tools, including but not limited to, box cutter(s), locks and/or other hand tools
5 and/or equipment required to carry out PLAINTIFF's assigned job duties, yet DEFENDANTS
6 failed to provide any and/or full reimbursement for these business expenses.

7 102. Based on information and belief, at times, Aggrieved Employees were not
8 reimbursed for the business use of their personal vehicles, including mileage, wear, and tear and/or
9 cost of fuel when they were required to drive around and/or between job sites, and/or otherwise use
10 their personal vehicles in carrying out the duties assigned by DEFENDANTS. As such,
11 DEFENDANTS failed to compensate Aggrieved Employees at the legally mandated Internal
12 Revenue Service (IRS) per mile compensation rates in effect during the relevant period. As
13 explained above, based on information and belief, Aggrieved Employees were not reimbursed for
14 the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or
15 maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

16 103. Based on information and belief, DEFENDANTS regularly failed to reimburse and
17 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
18 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
19 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
20 assigned by DEFENDANTS.

21 104. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
22 for all reasonable expenses associated with carrying out their duties required that Aggrieved
23 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
24 2802.

25 105. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
26 provides as follows:

27 106. (A) Each workday an employee is required to report for work and does report, but is
28 not put to work or is furnished less than half said employee's usual or scheduled day's work, the

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

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

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

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

22 110. Based on information and belief, DEFENDANTS have and continue to have a
23 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
24 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
25 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
26 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
27 violation of California law, including but not limited to Labor Code Section 551.

28 111. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed

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

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

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

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

28 115. As such, DEFENDANTS have violated California's paid sick leave laws and

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

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

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

15 118. 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.

22 119. 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).

26 120. 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.

1 121. For example, DEFENDANTS failed to provide PLAINTIFF with suitable seating,
2 and when PLAINTIFF was not engaged in duties which required PLAINTIFF to stand, no seating
3 was placed in reasonable proximity to PLAINTIFF's workstation.

4 122. DEFENDANTS' Aggrieved Employees worked in various positions, such as, but not
5 limited to, warehouse workers, warehouse associates, production workers, shipping and receiving
6 clerks, process technicians, mechanics, quality inspectors, material handlers, among other related
7 title(s) and/or position(s).

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

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

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

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

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

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

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

19 129. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

20 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

27 131. Based on information and belief, DEFENDANTS ordered unlawful financial credit
28 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved

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

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

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

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

26 135. Based on further information and belief, DEFENDANTS also required Aggrieved
27 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
28 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA

1 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
2 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

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

8 Unlawful Inquires into Criminal History

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

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

18 Unlawful PAGA Waiver

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

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

28 142. Moreover, the California Supreme Court has ruled that a court cannot compel

1 arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an
2 individual PAGA claim. *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 ("There is
3 no individual component to a PAGA action because 'every PAGA action ... is a representative
4 action on behalf of the state.'")

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

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

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

25 **FIRST CAUSE OF ACTION**
26 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
27 **2698, ET SEQ.**

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

146. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

1 **Failure to Keep Accurate Records**

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

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

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

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

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

24 151. Section (b) of Labor Code section 226 further requires employers to “afford current

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

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

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

22 **Meal Period Violations**

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

28 155. Employers must also provide employees with a second duty-free, uninterrupted thirty

1 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
2 be provided before the end of the 10th hour of work. *Ibid.*

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

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

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

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

28 160. Moreover, based on information and belief, Aggrieved Employees did not receive a

1 timely, uninterrupted second meal period when working shifts over ten (10) hours in a workday.

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

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

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

16 **Rest Period Violations**

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

1 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
2 applicable IWC Wage Order, §12(B).

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

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

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

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

26 169. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
27 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
28 was a missed or otherwise unlawful rest period. Based on further information and belief, when a

1 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
2 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
3 the regular rate of compensation for purposes of determining the owed rest period premium.

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

7 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

26 **Minimum and Overtime Wage Violations**

27 175. California law provides that employees in California must be paid for all hours
28 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less

1 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
2 The minimum wage standard applies to each hour employees worked for which they were not paid.
3 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
4 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
5 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

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

19 178. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
20 Aggrieved Employees for all hours worked.

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

27 180. Based on information and belief, DEFENDANTS failed to pay twice Aggrieved
28 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for

1 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
2 violation of California's overtime laws.

3 181. Based on information and belief, DEFENDANTS failed to properly implement an
4 AWS and/or failed to pay all owed wages in accordance with the AWS as described above.

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

12 183. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
13 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
14 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
15 Wage Orders, section 20.

16 **Violation of Labor Code Section 226.2**

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

28 185. Based on information and belief, DEFENDANTS failed to compensate Aggrieved

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

6 **Statutory Wage Violations**

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

18 **Refusal to Make Payment**

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

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 **Standard Conditions of Labor Violations**

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

10 **Business Expense Violations**

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

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

25 191. Further, “any contract or agreement, express or implied, made by any employee to
26 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
27 any employee or his personal representative of any right or remedy to which he is entitled to under

1 the laws of this State.” See Cal. Lab. Code section 2804.

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

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

8 194. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
9 Employees have suffered injury in that they were not completely reimbursed as mandated by
10 California law.

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

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

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

22 **Wage Statement Violations**

23 198. California law requires every employer semi-monthly or at the time of each payment
24 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
25 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
26 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
27 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
28 is paid; (7) the name of the employee and only the last four digits of his or her social security number

1 or an employee identification number other than a social security number; (8) the name and address
2 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
3 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

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

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

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

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

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

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

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

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

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

20 208. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
21 Aggrieved Employees with accurate, itemized wage statements.

22 209. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
23 Employees have suffered injury. The absence of accurate information on their wage statements has
24 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
25 mathematical computations to determine the amount of wages owed, and will cause difficulty and
26 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
27 submission of inaccurate information about wages and amounts deducted from wages to state and
28 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to

1 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
2 and pay records than if DEFENDANT had complied with its legal obligations.

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

6 **Unlawful Deductions**

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

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

19 **Reporting Time Pay Violations**

20 213. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

1 minimum wage.

2 215. Aggrieved Employees were not paid reporting time wages in accordance with
3 California law, including but not limited to the applicable IWC Wage Order. For example, based on
4 information and belief, at times, Aggrieved Employees reported to work for a scheduled shift but
5 were sent home and/or were not put to work and were not paid all owed reporting time pay wages
6 in accordance with California law.

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

13 **Violation of California Day of Rest Law**

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

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

24 **Seating Violations**

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

28 220. 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.

7 221. 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).

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

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

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

27 **Sick Leave Violations**

28 225. DEFENDANTS violated California's paid sick leave laws including, Labor Code

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

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

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

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

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

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

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

28 232. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the

1 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
2 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

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

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

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

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

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

23 **Untimely Payment of Final Wages**

24 236. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
25 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
26 payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an
27 employee not having a written contract for a definite period quits his or her employment, his or her
28 wages shall become due and payable not later than 72 hours thereafter, unless the employee has

1 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
2 to his or her wages at the time of quitting.”

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

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

15 239. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
16 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
17 256.

18 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

28 241. The California Labor Code places certain procedural and substantive limits on an

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

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

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

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

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

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

1 Unlawful Inquires into Criminal History

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

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

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

16 Unlawful PAGA Waiver

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

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

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

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

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

9 **Failure to Provide a Safe and Healthful Workplace**

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

13 255. (a) Every employer shall furnish employment and a place of employment that is safe
14 and healthful for the employees therein...

15 256. Labor Code section 6401 provides as follows:

16 257. Every employer shall furnish and use safety devices and safeguards, and shall adopt
17 and use practices, means, methods, operations, and processes which are reasonably adequate to
18 render such employment and place of employment safe and healthful. Every employer shall do every
19 other thing reasonably necessary to protect the life, safety, and health of employees.

20 258. Labor Code section 6402 prohibits the following:

21 259. No employer shall require, or permit any employee to go or be in any employment
22 or place of employment which is not safe and healthful.

23 260. Similarly, Labor Code section 6404 provides as follows:

24 261. No employer shall occupy or maintain any place of employment that is not safe and
25 healthful.

26 262. In addition to the above, Labor Code section 6403 requires that employees provide
27 safety devices to its employees. Labor Code section 6403 states:

28 263. No employer shall fail or neglect to do any of the following:

1 264. (a) To provide and use safety devices and safeguards reasonably adequate to render
2 the employment and place of employment safe.

3 265. (b) To adopt and use methods and processes reasonably adequate to render the
4 employment and place of employment safe.

5 266. (c) To do every other thing reasonably necessary to protect the life, safety, and health
6 of employees.

7 267. Similarly, Labor Code section 6406(d) states the following:

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

10 269. Finally, Labor Code section 6407 provides:

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

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

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

1 reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code
2 section 6403.

3 273. PLAINTIFF is informed and believes and thereon alleges that these failures include,
4 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or
5 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to
6 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
7 conditions between PLAINTIFF and/or other Aggrieved Employees.

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

16 275. At all relevant times, DEFENDANTS had and have a policy and practice of failing
17 within one business day after DEFENDANTS or a representative of DEFENDANTS received notice
18 of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other Aggrieved
19 Employees and/or their exclusive representatives, who were on the premises at the same worksite
20 as a qualifying individual who was within the infectious period that they may have been exposed to
21 COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and
22 practice of failing within one business day after DEFENDANTS or a representative of EMLOYER
23 received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other Aggrieved
24 Employees who were on the premises at the same worksite as the qualifying individual within the
25 infectious period and the exclusive representative, if any, with information regarding COVID-19-
26 related benefits to which the employee may be entitled under applicable federal, state or local laws,
27 including but not limited to, workers' compensation, and options for exposed employees, including
28 COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or

1 negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the
2 employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and
3 6432.

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

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

22 278. PLAINTIFF is informed and believes , and based thereon alleges that
23 DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and
24 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule
25 for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
26 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
27 blowers; and a sufficient number of toilets to be used by each of sex of employee.

28 279. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS

1 violated the Labor Code sections described herein, including without limitation, for failure to:
2 furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to
3 employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other
4 Aggrieved Employees, who were on the premises at the same worksite as a qualifying individual
5 who was within the infectious period that they may have been exposed to COVID-19 pursuant to
6 California and local laws.

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

11 281. As such, DEFENDANTS failed to comply with the occupational safety and health
12 standards, failed to do everything reasonably necessary to protect the health and safety of
13 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
14 necessary to maintain a safe and healthful workplace.

15 282. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
16 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
17 is subject to civil penalties.

18 283. Under the provisions of PAGA and the above mentioned Labor Code sections,
19 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
20 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
21 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, 6432 and all applicable
22 Wage Orders as well as all interpretations of these laws by California Courts and administrative
23 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
24 the following penalties:

25 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
26 relevant California Labor Code provisions listed herein only if permitted by the
27 PAGA statute, pursuant to Labor Code section 2699(a); and

28 b. Default PAGA penalties for any violation of the enumerated list of Labor Code

1 violations without a civil penalty recoverable under the PAGA, all in the default
2 amounts provided by Labor Code section 2699(f).

3 c. The proper measure of penalties under PAGA is the number of violations,
4 whether those violations were committed as against PLAINTIFF or any
5 Aggrieved Employee, whether a party to this action or not.

6 284. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
7 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 15, 2023

CROSNER LEGAL, PC

By: 
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WALTER WALKER