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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 CHUNG KONG WONG, on behalf of the
15 State of California, and others similarly
16 situated and aggrieved,

17 Plaintiff,

18 v.

19 YOSHINOYA AMERICA, INC., a
20 Delaware Corporation; and DOES 1-100,
21 inclusive,

22 Defendants.

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Superior Court of California,
County of Los Angeles
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Case No.: **23STCV20949**

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

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

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

21 **THE PARTIES**

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

25 5. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title
26 of assistant manager and/or a similar title(s) and/or position(s) from on or around September 20,
27 2022, through on or around March 17, 2023. PLAINTIFF worked for DEFENDANTS at
28 DEFENDANTS’ City of Industry and El Monte, California location(s). PLAINTIFF regularly

1 worked at least nine and one-half (9 ½) hours per day.

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

5 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
6 restaurants, offices, facilities and/or other locations in California, including but not limited to the
7 restaurants, offices, facilities and/or other locations in City of Industry and El Monte California.
8 DEFENDANTS, through its various restaurants, offices, facilities and/or other locations serve the
9 restaurant management, franchising and operations and/or food services industry.¹

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

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

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27

28 ¹ See <https://www.yoshinoyaamerica.com/locations> (Last visited on June 6, 2023).

1 **JOINT LIABILITY**

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

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

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

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

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

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

1 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
2 collectively would evaluate their wage rates.

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

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

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

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

20 **PAGA ALLEGATIONS**

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

24 All current and former non-exempt employees that worked either
25 directly or via a staffing agency for DEFENDANTS at any location
26 in California at any time from one year plus 65 days from the filing
27 of the initial Complaint through the present ("PAGA Period").

28 20. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code

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

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

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

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

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

22 **FACTUAL ALLEGATIONS**

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

27 25. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
28 DEFENDANTS as a non-exempt employee with a job title of assistant manager and/or or a similar

1 title(s) and/or position(s) from on or around September 20, 2022, through on or around March 17,
2 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' City of Industry and El Monte,
3 California locations(s). PLAINTIFF regularly worked at least nine and one-half (9 ½) hours per day.
4 DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours
5 worked. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an hourly
6 basis for time counted by DEFENDANTS as hours worked.

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

9 27. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
10 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
11 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
12 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
13 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
14 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
15 below. For example, PLAINTIFF was frequently required to clock out for purported meal periods
16 but to continue working due to the need to complete assigned work tasks, resulting in
17 DEFENDANTS' failure to pay PLAINTIFF for all work time, and the underpayment of minimum
18 wages and overtime wages owed to PLAINTIFF. Based on information and belief, DEFENDANTS
19 have a consistent policy and practice of requiring other Aggrieved Employees to clock out for meal
20 periods but to continue completing assigned work tasks, resulting in DEFENDANTS' failure to pay
21 Aggrieved Employees for all time worked and the underpayment of minimum wages and overtime
22 wages owed to Aggrieved Employees.

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

1 29. Based on information and belief, Aggrieved Employees were not paid for all hours
2 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
3 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
4 the clock work policies and/or practices. For example, based on information and belief, Aggrieved
5 Employees were required to complete off-the-clock work outside of scheduled shifts due to work-
6 related phone calls and/or messages they received to their phones/mobile devices and were required
7 to respond to, including but not limited to, communications from supervisors regarding scheduling
8 and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved Employees.
9 For example, at times PLAINTIFF was required to respond to work-related calls/messages from her
10 supervisor/manager outside of her scheduled shift times, resulting in consistent off-the-clock work
11 and the underpayment of wages owed to PLAINTIFF.

12 30. Based on information and belief, at times, Aggrieved Employees were required to
13 perform work tasks before clocking in for the start of their shifts and/or after clocking out for the
14 end of their shifts, including but not limited to, preparing food, cleaning DEFENDANTS' facility,
15 taking out the trash, performing administrative tasks, providing shift debriefings and/or attending
16 work meetings and/or reviewing safety policy documents, meeting handouts and/or other documents
17 as required by DEFENDANTS.

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

22 32. For example, based on information and belief, prior to clocking in to work,
23 Aggrieved Employees were required to walk to the back room and/or office to bestow any personal
24 items and/or don uniforms and/or protective equipment before clocking in for their shifts.
25 Additionally, PLAINTIFF and other Aggrieved Employees were required to perform other off-the-
26 clock work for which they were not compensated.

27 33. For example, based on information and belief, at times, DEFENDANTS'
28 electronic/computer/POS employee time-keeping system malfunctioned such that Aggrieved

1 Employees were required to either reinitiate and/or otherwise troubleshoot the system prior to being
2 able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in
3 from meal periods, resulting in off-the-clock work and the underpayment of wages owed to
4 Aggrieved Employees.

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

12 35. Based on further information and belief, Aggrieved Employees in charge of closing
13 their location(s) were required to first clock out for their shifts before enabling the alarm, turning
14 off all the lights in the facility and/or locking the doors. This resulted in additional off-the-clock
15 post-shift work that was not compensated and the underpayment of wages owed to Aggrieved
16 Employees. Based on information and belief, at times, DEFENDANTS requires/required Aggrieved
17 Employees to travel between DEFENDANTS' restaurants, facilities and/or locations without
18 compensating Aggrieved Employees for the travel time. For example, based on information and
19 belief, due to scheduling issues and/or understaffing, Aggrieved Employees were at times required
20 after working at their scheduled facility location to cover a shift at another of DEFENDANTS'
21 restaurants/facilities/locations but were not compensated for the time spent driving to the second
22 restaurant/facility, resulting in the underpayment of minimum and overtime wages owed to
23 Aggrieved Employees.

24 36. Based on information and belief, Aggrieved Employees were required to undergo
25 pre-shift temperature screenings and/or were required to complete a COVID-19 questionnaire prior
26 to clocking in for a shift, resulting in unpaid off-the-clock work.

27 37. Moreover, based on information and belief, DEFENDANTS failed to pay Aggrieved
28 Employees split shift premium wages when they worked split shifts during the relevant period. For

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

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

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

27 40. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
28 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal

1 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
2 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
3 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
4 forty (40) hours in a week.

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

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

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

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

1 belief, Aggrieved Employees were frequently, interrupted during purported meal periods and/or had
2 meal periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue
3 assigned job duties. For example, PLAINTIFF was frequently required to clock out for purported
4 meal periods but to continue working due to the need to complete assigned work tasks. Other times,
5 PLAINTIFF would work through his meal period completely and/or take his meal period late (i.e.
6 after the fifth of work) due to the restaurant being busy/the need to complete assigned work tasks.
7 Nevertheless, DEFENDANTS performed an automatic meal period deduction of at least thirty
8 minutes per shift notwithstanding DEFENDANTS had actual and/or constructive knowledge that
9 PLAINTIFF was frequently if not always required to work through part or all of his owed meal
10 periods.

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

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

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

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

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

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

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

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

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

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

28 55. PLAINTIFF and other Aggrieved Employees were not adequately informed,

1 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
2 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
3 the taking or timing of duty-free rest periods.

4 56. Based on information and belief, DEFENDANTS did not have a have a compliant
5 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
6 practice. For example, based on information and belief, PLAINTIFF and other Aggrieved
7 Employees were frequently unable to take compliant rest periods due to their need to complete
8 assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area
9 and/or had purported rest periods restricted to DEFENDANTS' premises. Based on information
10 and belief, DEFENDANTS failed to authorize and permit rest periods that were a "net" ten minutes
11 in a suitable rest area; instead, to the extent any rest periods were provided, DEFENDANTS limited
12 PLAINTIFF and other Aggrieved Employees to only ten-minute rest periods, requiring them to be
13 back at their workstations within ten minutes of leaving, in violation of California rest period law.

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

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

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

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

26 61. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
27 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
28 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each

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

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

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

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

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

24 **66. Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
25 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
26 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
27 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
28 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to

1 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
2 applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate by the employee.

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

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

16 69. Separately, DEFENDANTS failed to list the accurate total hours worked on wage
17 statements issued to PLAINTIFF and other Aggrieved Employees as, for example, when adding up
18 the hours listed for each category listed on DEFENDANTS' wage statement(s) issued to
19 PLAINTIFF, PLAINTIFF's total hours is greater than the total hours listed on the wage statement.
20 As such, DEFENDANTS issued wage statements to Aggrieved Employees that fail to list the
21 accurate total hours worked, in violation of Labor Code section 226(a)(2).

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

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

28 72. As such, DEFENDANTS' issued wage statements to Aggrieved Employees that did

1 not include all of the statutorily required information, including but not limited to, the correct name
2 and/or address of the legal entity that is the employer.

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

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

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

17 76. **Failure to Produce Employment Records.** Based on information and belief,
18 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
19 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code
20 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
21 counsel, sent multiple written requests for time, pay and personnel records to DEFENDANTS,
22 including but not limited to, on or around the following dates: April 12, 2023 and May 18, 2023.
23 Yet, DEFENDANTS failed to timely produce complete records and/or any records at all within the
24 time periods delineated by California labor law. Based on information and belief, DEFENDANTS
25 failed and continues to fail to timely produce complete payroll and personnel records when
26 requested by other Aggrieved Employees. Based on information and belief, DEFENDANTS failed
27 and continue to fail to timely produce complete time, pay, and personnel records when requested by
28 other Aggrieved Employees.

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

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

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

21 80. Based on information and belief, DEFENDANTS shifted the costs of doing business
22 onto Aggrieved Employees by requiring them to pay for business expenses including but not limited
23 to, purchase and/or maintenance of uniforms/work clothing/shoes/protective and/or safety
24 equipment (e.g., face masks and/or gloves) and/or the use of Aggrieved Employees' personal mobile
25 phone and data usage for work related purposes to receive and respond to work related messages
26 and/or phone calls.

27 81. For example, based on information and belief, Aggrieved Employees were required
28 to receive and respond to work-related calls and/or messages from supervisors and/or other

1 Aggrieved Employees regarding scheduling and/or other work tasks but were not reimbursed by
2 DEFENDANTS at all and/or in full for these business expenses. Based on information and belief,
3 Aggrieved Employees, including without limitation, those employed as delivery drivers and/or
4 similar title(s) and/or position(s), were required to use their personal cellphones/mobile devices for
5 navigation purposes and/or to otherwise carry out their assigned job duties.

6 82. Based on information and belief, DEFENDANTS have a uniform policy and
7 practice of failing to provide any and/or full reimbursement to Aggrieved Employees for expenses
8 incurred as a result of DEFENDANTS' business use of their personal cellphones/mobile devices.
9 Based on information and belief, at times, DEFENDANTS required Aggrieved Employees to use
10 their personal vehicles for work, such as, but not limited to, for driving between DEFENDANTS's
11 restaurants, facilities and/or locations, completing business errands and/or otherwise carrying out
12 their assigned job duties, however, DEFENDANTS did not provide any/full reimbursement to
13 Aggrieved Employees for all vehicle-related expenses they incurred in connection therewith,
14 including but not limited to, cost of fuel, mileage, and/or vehicle wear and tear.

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

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

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

26 86. (A) Each workday an employee is required to report for work and does report, but is
27 not put to work or is furnished less than half said employee's usual or scheduled day's work, the
28 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two

1 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less
2 than the minimum wage. (B) If an employee is required to report for work a second time in any one
3 workday and is furnished less than two (2) hours of work on the second reporting said employee
4 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
5 minimum wage.

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

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

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

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

26 91. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
27 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
28 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the

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

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

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

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

26 95. As such, DEFENDANTS have violated California's paid sick leave laws and
27 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
28 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These

1 unlawful practices and policies violate Labor Code sections 245-248.5.

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

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

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

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

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

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

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

27 101. Moreover, based on information and belief, the nature of the work reasonably
28 permitted the use of seats for at least part of the time that Aggrieved Employees were working.

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

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

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

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

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

28 **106. Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,

1 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
2 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
3 failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation
4 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
5 limited to, shift differentials) to Aggrieved Employees upon separation of employment, in violation
6 of California law, including but not limited to, Labor Code section 227.3.

7 **107. Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
8 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
9 were due and owing upon termination or resignation. Based on information and belief,
10 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
11 requirements of Labor Code sections 201-202 (including but not limited to, all owed vacation
12 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
13 limited to, shift differentials). For example, DEFENDANTS failed to furnish PLAINTIFF with any
14 final paycheck for at least approximately two (2) weeks following the separation of PLAINTIFF's
15 employment, and PLAINTIFF's late final paycheck was devoid of all wages owed, including
16 without limitation, all owed minimum wages, overtime wages, premium wages, vacation pay, all
17 owed sick leave and/or paid time off wages at the properly accrued rates, (including but not limited
18 to, all owed vacation pay/paid time off paid at the final rate including non-discretionary
19 compensation, including but not limited to, shift differentials).

20 **108.** Upon separation of employment, Aggrieved Employees' final paychecks were not
21 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
22 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
23 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
24 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
25 accrued rates.

26 **109.** Based on further information and belief, DEFENDANTS failed to timely provide all
27 owed wages immediately upon discharge of employment. Based in information and belief, at times,
28 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby

1 Aggrieved Employees would not be called in for work for longer than a single pay period due to
2 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
3 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
4 the end of such periods of employment, in violation of including but not limited to Labor Code
5 section 201-202.

6 **110. Unlawful Agreements-Unlawful Criminal History Inquiries.**

7 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

1 114. Based on information and belief, DEFENDANTS required Aggrieved Employees to
2 agree in writing to a background check which failed to abide by the requirements set forth in CA
3 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
4 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
5 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
6 the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,
7 failing to provide a way by which the individual could request a copy of the report, failing to disclose
8 the name, address, and telephone number of the third party preparing the report, and failing to
9 properly obtain authorization or consent to such a background check, and thus was an unlawful
10 background check.

11 115. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
12 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
13 section 432.5.

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

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

22 118. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
23 condition of employment, DEFENDANTS violated Labor Code section 432.5.

24 Unlawful Inquires into Criminal History

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

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

6 Unlawful PAGA Waiver

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

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

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

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

26 125. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
27 engaged in these same herein described unlawful practices, which led to violations of the California
28 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described

1 unlawful practices to all of its employees that it applied to PLAINTIFF.

2 **FIRST CAUSE OF ACTION**
3 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
4 **2698, *ET SEQ.***

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

7 126. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

8 **Failure to Keep Accurate Records**

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

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

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

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

25 130. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
26 Orders, section 7 require that employers keep the following information on file for each employee

27 ² Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
28 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil
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 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
2 and the corresponding number of hours worked by the employee at each hourly rate, when the
3 employee begins and ends each work period (including meal periods) and split intervals; total hours
4 worked by the employee; all deductions; gross wages earned; and net wages earned.

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

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

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

27 **Meal Period Violations**

28 134. California law requires employers to provide employees a duty-free, uninterrupted

1 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and
2 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and
3 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
4 *Court* (2012) 53 Cal.4th 1004.

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

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

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

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

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

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

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

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

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

21 **Rest Period Violations**

22 144. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
23 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
24 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
25 "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
26 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
27 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
28 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at

1 1029). The rest period requirement obligates employers to permit and authorize employees to take
2 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
3 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
4 257. If the employer fails to provide any required rest period, the employer must pay the employee
5 one hour of pay at the employee's regular rate of compensation for each workday the employer did
6 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
7 applicable IWC Wage Order, §12(B).

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

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

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

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

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

9 150. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
10 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
11 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

12 **Failure to Provide Suitable Resting Facilities**

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

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

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

28 154. DEFENDANTS’ failure to provide suitable resting facilities to PLAINTIFF and

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

3 **Minimum and Overtime Wage Violations**

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

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

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

24 158. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
25 Aggrieved Employees for all hours worked.

26 159. Based on information and belief, DEFENDANTS had actual or constructive
27 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
28 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and

1 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
2 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
3 Employees.

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

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

15 162. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
16 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
17 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
18 Wage Orders, section 20.

19 **Statutory Wage Violations**

20 163. California Labor Code section 223 makes it unlawful for an employer to secretly pay
21 wages lower than required by statute while purporting to pay legal wages. As described above,
22 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
23 earned minimum and overtime compensation for all hours worked which resulted in the payment of
24 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
25 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
26 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
27 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
28 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved

1 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
2 Labor Code § 2699(f)-(g).

3 **Refusal to Make Payment**

4 164. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
5 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
6 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
7 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
8 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
9 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
10 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
11 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

12 **Standard Conditions of Labor Violations**

13 165. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
14 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
15 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
16 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
17 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
18 minimum/overtime wages and other violations described herein result in separate violations of
19 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
20 1197.1 and 2699.

21 **Business Expense Violations**

22 166. California law requires employers to indemnify their employees for all necessary
23 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
24 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
25 Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary
26

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

1 expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees
2 incurred by the employee enforcing the rights granted by this section."

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

11 168. Further, "any contract or agreement, express or implied, made by any employee to
12 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
13 any employee or his personal representative of any right or remedy to which he is entitled to under
14 the laws of this State." *See* Cal. Lab. Code section 2804.

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

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

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

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

28 173. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved

1 Employees have suffered injury in that they were not completely reimbursed as mandated by
2 California law.

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

7 **Wage Statement Violations**

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

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

25 177. Moreover, due to violations detailed above, including but not limited to,
26 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
27 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
28 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish

1 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
2 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
3 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
4 compensation earned during the pay period into the regular rate of pay for purposes of calculating
5 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
6 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

14 179. Separately, DEFENDANTS failed to list the accurate total hours worked on wage
15 statements issued to PLAINTIFF and other Aggrieved Employees as, for example, when adding up
16 the hours listed for each category listed on DEFENDANTS’ wage statement(s) issued to
17 PLAINTIFF, PLAINTIFF’s total hours is greater than the total hours listed on the wage statement.
18 As such, DEFENDANTS issued wage statements to Aggrieved Employees that fail to list the
19 accurate total hours worked, in violation of Labor Code section 226(a)(2).

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

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

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

1 to list the inclusive dates of the pay period for which the Class Member is being paid.

2 183. DEFENDANTS' failure to accurately list all hours worked on all wage statements
3 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
4 Employees over whether they received all wages owed to them.

5 184. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
6 they could not easily determine whether they received all wages owed to them and whether they
7 were paid for all hours worked.

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

11 186. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
12 Aggrieved Employees with accurate, itemized wage statements.

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

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

25 **Unlawful Deductions**

26 189. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
27 an employee any part of wages theretofore paid by said employer to said employee." Based on

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

1 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
2 paychecks during the relevant period, including but not limited to deducting costs of uniforms and/or
3 other business costs and/or deducting wages for purported overpayments from previous pay periods
4 and/or unlawfully deducting wages for negligently damaged property. Such a practice is in violation
5 of including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to
6 civil penalties under Labor Code Section 2699.

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

13 **Reporting Time Pay Violations**

14 191. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

28 194. Based on information and belief, DEFENDANTS have a policy and practice of

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

6 **Violation of California Day of Rest Law**

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

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

17 **Seating Violations**

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

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

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

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

28 199. Suitable seating is one of the worker protections covered by California's Wage

1 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
2 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
3 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

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

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

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

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

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

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

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

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

16 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **Untimely Payment of Final Wages**

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

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

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

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

10 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

21 223. The California Labor Code places certain procedural and substantive limits on an
22 employers’ ability to conduct employee background checks and on how employers can use the
23 information they obtain through those background checks. Labor Code section 1024.5 states that
24 employers, except for financial institutions, may order a credit check only if the individual works
25 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
26 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
27 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
28 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee

1 background check, including but not limited to identifying an appropriate reason for the background
2 check, a separate consent form with required disclosures and certain formatting requirements,
3 additional forms such as a summary of rights, a way by which to request a copy of the report, as
4 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

22 Unlawful Inquires into Criminal History

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

27 230. Upon information and belief, DEFENDANTS, in violation of California law,
28 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act

1 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
2 employment and/or otherwise impermissibly inquired into criminal history on its employment
3 application in violation of California law.

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

9 Unlawful PAGA Waiver

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

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

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

24 235. Upon information and belief, DEFENDANTS required Aggrieved Employees to
25 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
26 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS
27 required written agreement to an unlawful provision as a condition of employment which is a
28 violation of labor code section 432.5.

1 236. Under the provisions of PAGA and the above mentioned Labor Code sections,
2 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
3 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
4 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
5 interpretations of these laws by California Courts and administrative bodies, as well as any other
6 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: August 30, 2023

CROSNER LEGAL, PC

By: 
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CHUNG KONG WONG