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Assigned for All Purposes
Judge Lon Hurwitz
Dept. CX103

7 Attorneys for Plaintiff FRANK MARTINEZ
8 on behalf of the State of California,
9 and others similarly situated and aggrieved

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

12 FRANK MARTINEZ, on behalf of the State
of California, and others similarly situated
13 and aggrieved,

14 Plaintiff,

15 v.

16
17 HORIZON OXYGEN AND MEDICAL
EQUIPMENT, INC., a California
18 Corporation; and DOES 1-100, inclusive,

19 Defendants.

Case No.: 30-2023-01342679-CU-OE-CXC

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

1 Plaintiff, FRANK MARTINEZ (“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 HORIZON OXYGEN AND MEDICAL EQUIPMENT, INC., a
4 California Corporation; and DOES 1-100, inclusive, (collectively referred to herein as
5 “DEFENDANTS”). PLAINTIFF is 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 Orange pursuant to
16 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within
17 this judicial district and conduct alleged by PLAINTIFF herein occurred in this this judicial district.
18 *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue
19 in a PAGA action is proper in any county where the defendants committed Labor Code violations
20 against some of its employees).

21 **THE PARTIES**

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

24 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
25 DEFENDANTS as a non-exempt employee with a job title of patient services technician and/or a
26 similar title and/or positions from in or around January 2019 through in or around May 4, 2023.
27 PLAINTIFF worked for DEFENDANTS at including but not limited to DEFENDANTS’
28 Sacramento, California locations(s).

6. Defendant HORIZON OXYGEN AND MEDICAL EQUIPMENT, INC., is a California corporation that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

7. DEFENDANTS own, operate, manage and/or staff its employees to work at branches, warehouses, offices, facilities and/or other location(s) in California, including but not limited to the branches, warehouses, offices, facilities throughout California, including but not limited to locations in Sacramento, Orange, San Diego, Bakersfield and other locations in California. DEFENDANTS, through their various locations serve the health care industry, providing such services as including but not limited to, the delivery and installation of durable medical equipment.

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

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

JOINT LIABILITY

10. Under California law, the definition of the terms “to employ” are broadly construed

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

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

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

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

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

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

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

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

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

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

PAGA ALLEGATIONS

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

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

20. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein.

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

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

10 21. PLAINTIFF, on June 7, 2023, through counsel, gave written notice by online filing
11 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
12 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
13 in this Complaint (“PAGA Notice”).

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

17 23. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
18 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
19 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
20 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
21 section 2699.3. Consequently, PLAINTIFF’s right to file the instant lawsuit against DEFENDANTS
22 has duly accrued.

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

26 **FACTUAL ALLEGATIONS**

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

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

3 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
4 DEFENDANTS as a non-exempt employee with a job title of patient services technician and/or a
5 similar title(s) and/or position(s) from in or around January 2019 through on or around May 4, 2023.
6 PLAINTIFF worked for DEFENDANTS at including but not limited to DEFENDANTS'
7 Sacramento, California location(s). PLAINTIFF regularly worked at least eight (8) to twelve (12)
8 hours per day. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
9 DEFENDANTS as hours worked.

10 27. Based on information and belief, DEFENDANTS also compensated PLAINTIFF
11 with non-discretionary compensation, including but not limited to, non-discretionary
12 bonuses/incentive pay (e.g., safety bonuses) and/or other non-discretionary compensation .

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

20 29. Based on information and belief, DEFENDANTS implemented a policy and/or
21 practice of rounding meal period start and end times and/or automatically deducting at least thirty
22 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
23 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
24 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
25 PLAINTIFF and Aggrieved Employees of all wages owed. For example, as explained above,
26 Aggrieved Employees, including but not limited to, PLAINTIFF, were frequently required to clock
27 out for purported meal periods but to continue working due to the need to complete assigned job
28 duties, resulting in consistent off-the-clock work and the underpayment of minimum wages and

1 overtime wages owed to PLAINTIFF and other Aggrieved Employees.

2 30. Based on information and belief, Aggrieved Employees were not paid for all hours
3 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
4 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
5 the clock work policies and/or practices. For example, based on information and belief,
6 DEFENDANTS required Aggrieved Employees to be at their assigned workstations and/or assigned
7 vehicles at the start of a scheduled shift, thereby forcing Aggrieved Employees to gather work
8 related equipment and/or safety gear prior to their scheduled shift and/or prior to clocking in/signing
9 in, thereby resulting in pre-shift off-the-clock work.

10 31. Based on information and belief, DEFENDANTS also failed to compensate
11 Aggrieved Employees for post-shift off-the-clock work, such as but not limited to, returning tools
12 and/or equipment to DEFENDANTS' facilities/warehouses/branches/locations, performing
13 maintenance or cleaning-related tasks and/or completing other work tasks. Based on information
14 and belief, DEFENDANTS did not compensate Aggrieved Employees for all time spent donning
15 and doffing personal protective equipment, safety equipment and/or uniforms/work clothing (e.g.,
16 gloves, and/or face masks) during meal periods, before the start of a scheduled shift, and after
17 completing a scheduled shift, resulting in DEFENDANTS' failure to pay Aggrieved Employees for
18 all work time and the underpayment of minimum wages and overtime wages owed to Aggrieved
19 Employees.

20 32. Based on information and belief, Aggrieved Employees were also pressured to
21 complete at least some of their work tasks off-the-clock in order to meet DEFENDANTS' goals and
22 expectations. For example, on information and belief, Aggrieved Employees were required to
23 complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-
24 related phone calls and/or messages they received to their personal phones and were required to
25 respond to, including but not limited to, communications from supervisors regarding scheduling
26 and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved Employees.
27 Based on information and belief, at times, DEFENDANTS' electronic employee time-keeping
28 system/app malfunctioned such that Aggrieved Employees were required to either reinitiate and/or

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

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

8 34. Based on information and belief, Aggrieved Employees were required to undergo
9 security screenings and/or other mandated screenings before and/or after a scheduled shift and/or
10 before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.
11 Based on information and belief, DEFENDANTS required Aggrieved Employees to undergo
12 COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
13 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

14 35. Based on information and belief, Aggrieved Employees were not compensated for
15 additional off-the-clock work, including without limitation, all waiting time and/or standby time
16 between jobs, tasks and/or assignments and/or were not compensated for all time spent on call and/or
17 for all time during which Aggrieved Employees were not relieved of all duties and DEFENDANTS'
18 control, resulting in the underpayment of minimum wages and overtime wages owed to Aggrieved
19 Employees.

20 36. Moreover, based on information and belief, DEFENDANTS failed to pay Aggrieved
21 Employees split shift premium wages when they worked split shifts during the relevant period.

22 37. For example, based on information and belief, at times, DEFENDANTS required
23 Aggrieved Employees to work two separate shifts in the same day. Based on information and belief,
24 DEFENDANTS failed to pay Aggrieved Employees split shift compensation whenever
25 PLAINTIFF's and/or other Aggrieved Employees' work schedules were interrupted by non-paid
26 non-working periods established by DEFENDANTS, which resulted in a violation of the applicable
27 Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift,
28 one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that

1 workday...). *See, also*, Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one
2 (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday,
3 except when the employee resides at the place of employment).

4 38. DEFENDANTS also failed to separately itemize these split shift premium wages on
5 PLAINTIFF's and/or other Aggrieved Employees' wage statements, in violation of Labor Code
6 sections 510, 1194 and all applicable IWC Wage Orders. *See*,
7 https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on
8 the pay stub provided to the employee, and it should be shown as a separate category such as "Split
9 Shift Premium" and should not be lumped into another category such as wages, bonus, etc.
10 DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF
11 and/or other Aggrieved Employees on their wage statements.

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

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

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

27 42. Based on information and belief, DEFENDANTS had actual and/or constructive
28 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to

1 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
2 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation
3 of California's minimum and overtime wage laws.

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

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

13 45. For example, based on information and belief, DEFENDANTS compensated
14 PLAINTIFF with non-discretionary compensation, including but not limited to, non-discretionary
15 bonuses/incentive pay (e.g., safety bonuses) and/or other non-discretionary compensation during
16 pay periods in which PLAINTIFF worked overtime yet DEFENDANTS failed to incorporate all
17 non-discretionary compensation into the regular rate(s) of pay used to calculate the owed overtime
18 rate, resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF.

19 46. **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 at times
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/ to their assigned vehicles due
3 to the need to continue assigned job duties. For example, PLAINTIFF was frequently required to
4 clock out for meal periods but to continue working during unpaid meal periods due to lack of relief
5 workers, the need to complete assigned deliveries/jobs and/or complete other work tasks.

6 47. Other times, PLAINTIFF was forced to take his meal period late (i.e. after the fifth
7 hour of work) due to lack of relief workers and/or in order to keep up with his assigned delivery
8 schedule and/or complete other work tasks.

9 48. Also, DEFENDANTS required PLAINTIFF to monitor his phone for work-related
10 communications throughout the entirety of his shifts, including but not limited to, during any
11 purportedly off-duty meal periods, resulting in DEFENDANTS' failure to relieve PLAINTIFF of
12 all duties and DEFENDANTS' control during unpaid meal periods, in violation of California's meal
13 period laws and minimum wage and overtime wage laws, among other violations of the Labor Code
14 described herein. For example, DEFENDANTS told PLAINTIFF during training that PLAINTIFF
15 was required to always monitor his work phone throughout the entirety of his shifts, including but
16 not limited to, during any meal periods. As such, PLAINTIFF did not receive a legally compliant
17 meal period during the relevant period.

18 49. Based on information and belief, DEFENDANTS manipulated, edited and/or altered
19 time records to make it appear as though PLAINTIFF and other Aggrieved Employees were taking
20 a timely, thirty-minute, off-duty, uninterrupted meal period each shift even though DEFENDANTS
21 had actual and/or constructive knowledge PLAINTIFF and other Aggrieved Employees were
22 frequently required to work through part or all of their unpaid meal periods, resulting in meal period
23 law violations, off-the-clock work, and the underpayment of minimum and overtime wages owed to
24 PLAINTIFF and other Aggrieved Employees, among other violations of the Labor Code described
25 herein.

26 50. Based on information and belief, other Aggrieved Employees were consistently
27 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
28 interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing,

1 the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and
2 expectations.

3 51. Based on information and belief, DEFENDANTS implemented policies and/or
4 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
5 during unpaid meal periods. For example, PLAINTIFF was required to monitor his mobile device
6 for work-related communications during any purportedly off-duty meal periods, and as such, was
7 not relieved of all duties and DEFENDANTS' control during unpaid meal periods, resulting in meal
8 period law violations and the underpayment of minimum wages and overtime wages owed to
9 PLAINTIFF, among other violations of the Labor Code described herein.

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

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

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

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

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

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

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

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

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

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

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

1 62. Also, DEFENDANTS required PLAINTIFF to monitor his phone for work-related
2 communications throughout the entirety of his shifts, including but not limited to, during any
3 purportedly off-duty rest periods, resulting in DEFENDANTS' failure to relieve PLAINTIFF of all
4 duties and DEFENDANTS' control during any rest periods, in violation of California's rest period
5 law. For example, DEFENDANTS told PLAINTIFF during training that PLAINTIFF was required
6 to always monitor his work phone throughout the entirety of his shifts, including but not limited to,
7 during any rest periods. As such, PLAINTIFF was not relieved of ally duties and DEFENDANTS'
8 control during any purported rest periods, in violation of California rest period law. DEFENDANTS
9 did not pay any premiums for these denied rest periods.

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

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

16 65. Based on information and belief, DEFENDANTS implemented policies and/or
17 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
18 DEFENDANTS' control during rest periods. For example, PLAINTIFF was required to monitor his
19 mobile device for work-related communications during any rest periods, and as such, was not
20 relieved of all duties and DEFENDANTS' control during any rest periods, in violation of California
21 rest period law.

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

25 67. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
26 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
27 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
28 workday a proper rest period was not provided and/or failed to pay the proper rest period premium

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

4 **68. Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
5 provides as follows:

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

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

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

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

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

10 74. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities
11 during their hours of work, particularly during meal and/or rest periods.

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

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

23 77. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
24 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
25 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
26 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
27 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
28 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or

1 other off-the-clock work policies and practices described above) which results in a violation of
2 Labor Code section 226(a).

3 78. Based on information and belief, wage statements issued by DEFENDANTS failed
4 to list all applicable hourly rates in effect during the pay period and the corresponding number of
5 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
6 Code section 226(a)(9). For example, based on information and belief, DEFENDANTS' wage
7 statements issued to Aggrieved Employees do not provide an accurate overtime rate(s) because they
8 do not list overtime rate(s) of pay at 1.5 times the regular rate(s) of pay and instead list at least two
9 separate overtime rates of pay and/or list an overtime rate of pay that does not take into account all
10 non-discretionary compensation earned during the pay period, thereby failing to list all applicable
11 hourly rates in effect during the pay period and the corresponding number of hours worked at each
12 hourly rate, in violation of including but not limited to, Labor Code section 226(a)(9).

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

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

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

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

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

28 84. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from

1 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
2 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
3 from Aggrieved Employees paychecks during the relevant period including but not limited to
4 deducting costs of uniforms and/or other business costs and/or deducting wages for purported
5 overpayments from previous pay periods and/or unlawfully deducting wages for negligently
6 damaged property and/or deducting costs advanced by DEFENDANTS from Aggrieved
7 Employees’ final paychecks. Such a practice is in violation of including but not limited to, Labor
8 Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section
9 2699.

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

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

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

1 88. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
2 Aggrieved Employees who were compensated on a commission basis with proper written
3 commission agreements, in violation of Labor Code section 2751.

4 89. **Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an
5 employer to pay employees compensated on a piece-rate basis separately for rest and recovery
6 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an
7 employer to include on the wage statements for these employees the total hours of compensable rest
8 and recovery period, the total hours for other non-productive time, the rates of compensation for
9 these hours, and the gross wages paid for these hours. In addition, the statute requires that employees
10 shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the
11 higher of: (i) an average hourly rate determined by dividing the total compensation for the
12 workweek, exclusive of compensation for rest and recovery periods and any premium compensation
13 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,
14 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to
15 employees compensated on a commission basis.

16 90. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
17 Employees who were paid solely on a piece rate (e.g., per installation and/or delivery completed)
18 and/or commission basis separately for the rest periods and nonproductive time, and/or failed to pay
19 them for this time at the correct rates. Based on information and belief, DEFENDANTS further
20 failed to include this information on Aggrieved Employees' wage statements. As such,
21 DEFENDANTS failed to comply with Labor Code section 226.2.

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

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

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

7 93. For example, based on information and belief, Aggrieved Employees were required
8 to receive and respond to work-related calls and/or messages from supervisors and/or other
9 Aggrieved Employees regarding scheduling and/or other work tasks but were not reimbursed by
10 DEFENDANTS at all and/or in full for these business expenses. For example, at times,
11 DEFENDANTS contacted PLAINTIFF on his personal cell phone during his shifts and/or outside
12 of scheduled shift times, but DEFENDANTS did not reimburse PLAINTIFF at all for
13 DEFENDANTS' business use of PLAINTIFF's personal cell phone/mobile device.

14 94. Based on information and belief, while at times DEFENDANTS provided
15 PLAINTIFF with a company phone, the company phone often malfunctioned and during including
16 but not limited to those times when the company phone(s) malfunctioned and/or was otherwise not
17 working/accessible, DEFENDANTS would contact PLAINTIFF on his personal cell phone and
18 require PLAINTIFF to respond to DEFENDANTS on same but did not provide PLAINTIFF with
19 any reimbursement for these business expenses.

20 95. Based on information and belief, DEFENDANTS failed to reimburse Aggrieved
21 Employees for expenses associated with having to purchase and/or maintain their own hand tools
22 and/or equipment required to perform their assigned job duties. Based on information and belief,
23 DEFENDANTS required Aggrieved Employees to pay for the purchase and/or maintenance of
24 uniforms/work clothing and/or pay for the purchase of continued education trainings/certification
25 courses.

26 96. Based on information and belief, Aggrieved Employees were not reimbursed for the
27 cost of purchasing and/or maintaining work uniforms/clothing/shoes and/or protective gear (e.g.,
28 gloves and/or face masks).

1 97. Based on information and belief, at times, Aggrieved Employees were not
2 reimbursed for the business use of their personal vehicles, including mileage, wear and tear, and/or
3 cost of fuel when they were required to drive around and/or between job sites and/or
4 DEFENDANTS' various facilities and/or locations, and/or otherwise use their personal vehicles in
5 carrying out the duties assigned by DEFENDANTS. As such, DEFENDANTS failed to compensate
6 Aggrieved Employees at the legally mandated Internal Revenue Service (IRS) per mile
7 compensation rates in effect during the relevant period.

8 98. Based on information and belief, at times Aggrieved Employees incurred business
9 expenses they were not reimbursed for, such as but not limited to, cost of fuel, tolls/fines, parking
10 expenses and/or other vehicle-related expenses incurred when using DEFENDANTS' company
11 vehicles to carry out their assigned job duties. As explained above, based on information and belief,
12 Aggrieved Employees were not reimbursed for the cost of using their personal phones for work-
13 related purposes and/or the cost of purchasing and/or maintaining work uniforms/work
14 clothing/work shoes, and/or personal protective/safety gear.

15 99. 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.

20 100. 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.

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

28 102. Based on information and belief, DEFENDANTS have and continue to have a

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

6 **103. Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
7 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
8 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the
9 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
10 accrued sick leave hours on the correct number of hours worked (as a result of the
11 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
12 times/other required off-the-clock work including but not limited to unpaid meal periods) and by
13 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
14 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
15 compensation into the sick leave pay rate calculation.

16 **104.** Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
17 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
18 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
19 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
20 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
21 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
22 used sick leave and the balance of paid sick leave.

23 **105.** Based on information and belief, throughout the relevant time period,
24 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
25 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
26 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
27 prior to their respective separations, for as on several occasions thereafter, he or she would have
28 been entitled to use the banked sick leave and earn appropriate compensation.

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

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

10 108. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
11 that all employers with 26 or more employees are required to provide up to 80 hours for covered
12 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
13 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
14 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
15 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
16 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

21 110. 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.

28 111. 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).

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

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

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

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

26 116. Based on information and belief, DEFENDANTS charges an additional service
27 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
28 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the

1 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
2 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
3 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
4 constitute a gratuity that is intended to the employees providing the service).

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

8 118. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
9 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
10 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
11 failing to pay all vested, accrued paid time off (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) to Aggrieved Employees upon separation of employment, in violation
14 of California law, including but not limited to, Labor Code section 227.3.

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

20 120. 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 (including but not limited to, all owed vacation pay/paid time off paid at the final rate
26 including non-discretionary compensation, including but not limited to, shift differentials).

27 121. Based on further information and belief, DEFENDANTS failed to timely provide all
28 owed wages immediately upon discharge of employment. Based in information and belief, at times,

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

7 122. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

8 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

15 124. 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.

20 125. 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.

1 126. 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.

11 127. 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.

14 128. 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.

19 129. 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.

22 130. 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

25 131. 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.

1 132. 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

7 133. 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.

10 134. 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.”)

16 135. 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.’”)

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

26 137. **Failure to Provide a Safe and Healthful Workplace.** Based on information and
27 belief, DEFENDANTS failed to provide a safe and healthful workplace. Based on further
28 information and belief, DEFENDANTS have had a policy and practice of failing, within one

1 business day after DEFENDANTS or a representative of DEFENDANTS received a notice of
2 potential exposure to COVID-19, to notify PLAINTIFF and other Aggrieved Employees who were
3 on the premises at the same worksite as the qualifying individual within the infectious period, and
4 the employers of subcontracted employees who were on the premises at the same worksite as the
5 qualifying individual within the infectious period and the exclusive representative, if any, of the
6 cleaning and disinfection plan that the employer is implementing per the guidelines of the COVID
7 10 prevention program per the Cal-OSHA COVID-19 Emergency Temporary Standards, among
8 other things in violation of Labor Code sections 6409.6 and/or 6432.

9 138. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
10 engaged in these same herein described unlawful practices, which led to violations of the California
11 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
12 unlawful practices to all of its employees that it applied to PLAINTIFF.

13 **FIRST CAUSE OF ACTION**
14 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
15 **2698, *ET SEQ.***
16 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
17 **Defendants)**

18 139. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

19 **Failure to Keep Accurate Records**

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

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

142. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all

1 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
2 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
3 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
4 period during which the referenced statutes and Wage Order provisions were violated.¹

5 **Meal Period Violations**

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

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

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

22 146. Employers must pay employees an additional hour of wages at the employees’
23 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
24 meal period, first meal period provided after five (5) hours, second meal period provided after 10

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

1 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to
2 provide an employee a meal period in accordance with the applicable provision of this Order, the
3 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation
4 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

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

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

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

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

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

26 152. These unlawful meal period policies and practices result in violations of Labor Code
27 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
28 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable

1 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
2 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

3 **Rest Period Violations**

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

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

28 155. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely

1 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
2 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
3 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
4 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
5 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

22 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

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

13 **Minimum and Overtime Wage Violations**

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

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

27 166. As explained above, DEFENDANTS violated California's minimum and overtime
28 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked

1 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
2 start and end times and meal period start and end times), payment according to scheduled hours
3 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during
4 meal periods, and/or other otherwise off-the-clock work (described above), and/or other unlawful
5 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

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

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

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

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

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

1 **Failure to Provide Written Commission Agreements**

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

7 173. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
8 Aggrieved Employees who were compensated on a commission basis with proper written
9 commission agreements, in violation of Labor Code section 2751.

10 **Violation of Labor Code Section 226.2**

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

22 175. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
23 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
24 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
25 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
26 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
27 226.2.

28 **Statutory Wage Violations**

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

12 **Refusal to Make Payment**

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

21 **Standard Conditions of Labor Violations**

22 178. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
23 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
24 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
25 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'

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

1 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
2 minimum/overtime wages and other violations described herein result in separate violations of
3 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
4 1197.1 and 2699.

5 **Business Expense Violations**

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

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

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

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

26 183. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
27 full reimbursement for all reasonable expenses associated with carrying out their duties required
28 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business

1 expenses in violation of Labor Code section 2802.

2 184. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and other Aggrieved
3 Employees have suffered injury in that they were not completely reimbursed as mandated by
4 California law.

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

9 186. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
10 Employees have suffered injury in that they were not completely reimbursed as mandated by
11 California law.

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

16 **Wage Statement Violations**

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

26 189. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
27 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
28 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail

1 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
2 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
3 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
4 effect during the pay period and the corresponding number of hours worked at each hourly rate by
5 the employee, in violation of Labor Code section 226(a)(9).

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

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

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

27 193. Separately, and independent from the above allegations, based on information and
28 belief, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees that

1 violate Labor Code section 226(a)(8), by failing to list the correct name and/or address of the legal
2 entity that is the employer.

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

5 195. DEFENDANTS' failure to accurately list all hours worked on all wage statements
6 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
7 Employees over whether they received all wages owed to them.

8 196. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
9 they could not easily determine whether they received all wages owed to them and whether they
10 were paid for all hours worked.

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

14 198. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
15 Aggrieved Employees with accurate, itemized wage statements.

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

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

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

1 **Unlawful Deductions**

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

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

14 **Reporting Time Pay Violations**

15 203. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

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

7 207. 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.

11 208. 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**

18 209. 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.

21 210. 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.

28 211. 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).

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

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

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

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

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

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

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

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

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

15 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **Untimely Payment of Final Wages**

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

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

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

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

7 233. 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**

11 234. *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 confidentiality and/or nondisclosure agreements, unlawful releases and/or
17 waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or
18 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment
19 in violation of Labor Code section 432.5.

20 235. The California Labor Code places certain procedural and substantive limits on an
21 employers’ ability to conduct employee background checks and on how employers can use the
22 information they obtain through those background checks. Labor Code section 1024.5 states that
23 employers, except for financial institutions, may order a credit check only if the individual works
24 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
25 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
26 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
27 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
28 background check, including but not limited to identifying an appropriate reason for the background

1 check, a separate consent form with required disclosures and certain formatting requirements,
2 additional forms such as a summary of rights, a way by which to request a copy of the report, as
3 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

21 Unlawful Inquires into Criminal History

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

26 242. Upon information and belief, DEFENDANTS, in violation of California law,
27 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
28 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of

1 employment and/or otherwise impermissibly inquired into criminal history on its employment
2 application in violation of California law.

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

8 Unlawful PAGA Waiver

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

13 245. 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.")

19 246. 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.'")

24 247. 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 **Failure to Provide a Safe and Healthful Workplace.**

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

5 249. (a) Every employer shall furnish employment and a place of employment that is safe
6 and healthful for the employees therein...

7 250. Labor Code section 6401 provides as follows:

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

12 252. Labor Code section 6402 prohibits the following:

13 253. No employer shall require, or permit any employee to go or be in any employment
14 or place of employment which is not safe and healthful.

15 254. Similarly, Labor Code section 6404 provides as follows:

16 255. No employer shall occupy or maintain any place of employment that is not safe and
17 healthful.

18 256. In addition to the above, Labor Code section 6403 requires that employees provide
19 safety devices to its employees. Labor Code section 6403 states:

20 257. No employer shall fail or neglect to do any of the following:

21 258. (a) To provide and use safety devices and safeguards reasonably adequate to render
22 the employment and place of employment safe.

23 259. (b) To adopt and use methods and processes reasonably adequate to render the
24 employment and place of employment safe.

25 260. (c) To do every other thing reasonably necessary to protect the life, safety, and health
26 of employees.

27 261. Similarly, Labor Code section 6406(d) states the following:

28 262. No person shall do any of the following ... (d) Fail or neglect to do every other thing

1 reasonably necessary to protect the life, safety, and health of employees.

2 263. Finally, Labor Code section 6407 provides:

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

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

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

23 267. PLAINTIFF is informed and believes and thereon alleges that these failures include,
24 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or
25 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to
26 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
27 conditions between PLAINTIFF and/or other Aggrieved Employees.

28 268. At all relevant times, DEFENDANTS had a policy and practice of failing to give

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

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

24 270. At all relevant times, DEFENDANTS had and have a policy and practice of failing
25 within one business day after DEFENDANTS or a representative of DEFENDANTS received a
26 notice of potential exposure to COVID-19 to notify PLAINTIFF and other Aggrieved Employees
27 who were on the premises at the same worksite as the qualifying individual within the infectious
28 period, and the employers of the subcontracted employees who were on the premises at the same

1 worksite as the qualifying individual within the infectious period and the exclusive representative,
2 if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of
3 the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per
4 the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated,
5 without limitation, Labor Code sections 6409.6 and 6432.

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

14 272. PLAINTIFF is informed and believes, and based thereon alleges that
15 DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and
16 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule
17 for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
18 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
19 blowers; and a sufficient number of toilets to be used by each of sex of employee.

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

27 274. Based on information and belief, DEFENDANTS failed to protect Aggrieved
28 Employees from exposure to COVID-19 due to, including but not limited to, failing to

1 maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address
2 hazards related to the COVID-19 virus.

3 275. As such, DEFENDANTS failed to comply with the occupational safety and health
4 standards, failed to do everything reasonably necessary to protect the health and safety of
5 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
6 necessary to maintain a safe and healthful workplace.

7 276. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
8 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
9 is subject to civil penalties.

10 277. Under the provisions of PAGA and the above mentioned Labor Code sections,
11 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
12 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
13 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, 6432 and all applicable
14 Wage Orders as well as all interpretations of these laws by California Courts and administrative
15 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
16 the following penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: August 15, 2023

CROSNER LEGAL, PC

By: 
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FRANK MARTINEZ