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

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

13 **COUNTY OF LOS ANGELES**

14 MARLON DE LEON, on behalf of the State
15 of California, and others similarly situated
16 and aggrieved,

17 Plaintiff,

18 v.

19 HAIDILAO HOT POT CENTURY CITY
20 INC, a California Corporation; HAIDILAO
21 HOT POT SAN DIEGO, INC., a California
22 Corporation; HAIDILAO HOT POT DALY
23 CITY, INC., a California Corporation;
24 HAIDILAO CATERING (U.S.A.) INC., a
25 California Corporation; HAIDILAO HOT
26 POT FREMONT INC., a California
27 Corporation; HAIDILAO HOT POT
28 INDUSTRY INC., a California Corporation;
HAIDILAO RESTAURANT GROUP, INC., a
California Corporation; HAIDILAO
RESTAURANT CALIFORNIA INC., a
California Corporation; HDL
MANAGEMENT USA CORPORATION, a
California corporation; and DOES 1-100,
inclusive,

Defendants.

Case No.: **23STCV19515**

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

1 Plaintiff, MARLON DE LEON (“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 HAIDILAO HOT POT CENTURY CITY INC, a California
4 Corporation; HAIDILAO HOT POT SAN DIEGO, INC., a California Corporation; HAIDILAO
5 HOT POT DALY CITY, INC., a California Corporation; HAIDILAO CATERING (U.S.A.) INC.,
6 a California Corporation; HAIDILAO HOT POT FREMONT INC., a California Corporation;
7 HAIDILAO HOT POT INDUSTRY INC., a California Corporation; HAIDILAO RESTAURANT
8 GROUP, INC., a California Corporation; HAIDILAO RESTAURANT CALIFORNIA INC., a
9 California Corporation; HDL MANAGEMENT USA CORPORATION, a California corporation;
10 and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is
11 informed and believes and thereon alleges as follows:

12 **INTRODUCTION**

13 1. This is a representative action filed by PLAINTIFF on behalf of PLAINTIFF, all
14 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California’s
15 Private Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties
16 (75% payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
17 Employees) for DEFENDANTS’ violations of the California Labor Code as alleged below.

18 **JURISDICTION AND VENUE**

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

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

27 **THE PARTIES**

28 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of

1 California and a citizen of the State of California.

2 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
3 DEFENDANTS as a non-exempt employee with a job title of busser, food runner and/or or a similar
4 title and/or position from in or around June 2022 through in or around July 9, 2022, or later.
5 PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Los Angeles/Century City, California
6 locations(s).

7 6. DEFENDANTS are California corporations that, at all relevant times, were
8 authorized to do business within the State of California and are doing business in the State of
9 California.

10 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
11 stores, restaurants, facilities and/or other location(s) in California, including but not limited to the
12 stores, restaurants, facilities and/or other locations located throughout California, including but not
13 limited to locations in Arcadia, City of Industry, Irvine, Fremont, Century City, San Diego,
14 Cupertino, Fremont, California and/or other locations. DEFENDANTS, through their various
15 restaurants/other locations serve the food products manufacturing and/or food service industry.

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

22 9. PLAINTIFF is further informed and believes that, at all relevant times, each
23 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
24 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
25 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
26 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
27 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
28 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant

1 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
2 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
3 controlled, aided and abetted the conduct of all other Defendants.

4 **JOINT LIABILITY**

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

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

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

14 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
15 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
16 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
17 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
18 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
19 considered the joint employers of PLAINTIFF and Aggrieved Employees. For example,
20 DEFENDANTS' wage statements issued to PLAINTIFF identify Haidilao Hot Pot Century City Inc
21 as the name of PLAINTIFF's employer. However, various documents contained in PLAINTIFF's
22 personnel file, including but not limited to, hiring documents and/or employment information
23 documents identify "Haidilao Hot Pot" and/or "Haidilao" as the name of PLAINTIFF's employer.
24 Also, based on information and belief, DEFENDANTS, and each of them, maintain the same agent
25 for service of process and/or principal place of business and/or California mailing address as
26 provided to the California Secretary of State and/or use some of the same attorneys and/or human
27 resources personnel to oversee employment-related matters.

28 14. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
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PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
2 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
3 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
4 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
5 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively
6 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of
7 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
8 and other Aggrieved Employees' employment with or without cause. Upon information and belief,
9 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
10 writing the details of their compensation, and the manner in which they were to take meal and rest
11 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
12 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
13 collectively would evaluate their wage rates.

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

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

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

28 18. By reason of their status as joint employers of PLAINTIFF and Aggrieved

1 Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor
2 Code and applicable Wage Orders as to all Aggrieved Employees.

3 **PAGA ALLEGATIONS**

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

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

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

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

24 21. PLAINTIFF, on June 5, 2023, through counsel, gave written notice by online filing
25 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
26 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
27 in this Complaint (“PAGA Notice”).

28 22. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California

1 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
2 Employees.

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

6 **FACTUAL ALLEGATIONS**

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

11 25. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFFS worked for
12 DEFENDANTS as a non-exempt employee with a job title of, busser, food runner or a similar title
13 from in or around June 2022 through in or around at least July 9, 2022. PLAINTIFF worked for
14 DEFENDANTS at DEFENDANTS' Los Angeles, California location(s). PLAINTIFF regularly
15 worked at least six (6) to eight (8) hours per day, at least four (4) to five (5) days per week.
16 DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours
17 worked.

18 26. Based on information and belief, PLAINTIFF and other Aggrieved Employees also
19 earned tips as part of their compensation. Based on further information and belief, PLAINTIFF and
20 other Aggrieved Employees also earned non-discretionary compensation, including but not limited
21 to, non-discretionary bonuses/incentive pay.

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

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

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

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

9 30. Based on information and belief, Aggrieved Employees were not paid for all hours
10 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
11 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
12 the clock work policies and/or practices. For example, based on information and belief, Aggrieved
13 Employees were consistently required to perform pre-shift and/or post-shift off-the-clock that was
14 neither recorded nor compensated by DEFENDANTS.

15 31. For example, during most if not all shifts worked during the relevant period,
16 PLAINTIFF was required to clock out for the end of his shift but to continue performing assigned
17 job duties, including without limitation, taking out the trash and/or completing other work tasks.
18 Also, based on information and belief, at times, DEFENDANTS' electronic/computer/tablet
19 employee time-keeping systems and/or app malfunctioned such that Aggrieved Employees were
20 required to either reinitiate and/or otherwise troubleshoot the system/app prior to being able to clock
21 in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal
22 periods, resulting in off-the-clock work and the underpayment of wages owed to Aggrieved
23 Employees.

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

28 33. Based on information and belief, Aggrieved Employees were required to complete

1 off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they
2 received to their phones/mobile devices and were required to respond to, including but not limited
3 to, communications from supervisors and/or other employees regarding scheduling and/or other
4 work tasks, resulting in the underpayment of wages owed to Aggrieved Employees.

5 34. Based on information and belief, DEFENDANTS did not compensate Aggrieved
6 Employees for time spent donning and doffing personal protective equipment and/or uniforms (e.g.,
7 rubber gloves, hair nets, aprons, hats, and/or face masks) during meal periods before the start of a
8 scheduled shift, and after completing a scheduled shift.

9 35. Moreover, based on information and belief, Aggrieved Employees who opened their
10 work locations were required to first unlock the doors, turn on all the lights in the restaurant/facility
11 and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work
12 and the underpayment of wages owed to Aggrieved Employees. Based on further information and
13 belief, Aggrieved Employees in charge of closing their location(s) were required to first clock out
14 for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the
15 doors. This resulted in additional off-the-clock post-shift work that was not compensated, and the
16 underpayment of wages owed to Aggrieved Employees.

17 36. Based on information and belief, at times, DEFENDANTS requires/required
18 Aggrieved Employees to travel between DEFENDANTS' restaurants, stores, facilities and/or other
19 locations without compensating Aggrieved Employees for the travel time. For example, based on
20 information and belief, due to scheduling issues and/or understaffing, Aggrieved Employees were
21 at times required after working at their scheduled facility location to cover a shift at another of
22 DEFENDANTS' restaurants/facilities/locations but were not compensated for the time spent driving
23 to the second restaurant/facility, resulting in the underpayment of minimum and overtime wages
24 owed to Aggrieved Employees.

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

28 38. Moreover, based on information and belief, DEFENDANTS failed to pay Aggrieved

1 Employees split shift premium wages when they worked split shifts during the relevant period. For
2 example, based on information and belief, at times, DEFENDANTS required Aggrieved Employees
3 to work two separate shifts in the same day. Based on information and belief, DEFENDANTS failed
4 to pay Aggrieved Employees split shift compensation whenever PLAINTIFF's and/or other
5 Aggrieved Employees' work schedules were interrupted by non-paid non-working periods
6 established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See
7 section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay
8 at the minimum wage shall be paid in addition to the minimum wage for that workday...). See, also,
9 Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the
10 minimum wage shall be paid in addition to the minimum wage for that workday, except when the
11 employee resides at the place of employment).

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

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

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

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

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

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

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

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

1 completely. For example, based on information and belief, Aggrieved Employees were at times
2 forced to take late meal periods in order to complete assigned job duties. Based on information and
3 belief, Aggrieved Employees were at times, interrupted during purported meal periods and/or had
4 meal periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue
5 assigned job duties. For example, PLAINTIFF was frequently required to clock out for meal periods
6 but to continue working and/or was interrupted during unpaid meal periods due to the need to
7 complete assigned work tasks. Other times, PLAINTIFF was required to take his meal period late
8 and/or work through PLAINTIFF's meal period completely due to the need to complete assigned
9 work tasks, lack of relief workers available and/or lack of coverage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 59. 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 60. 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 61. 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.

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

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

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

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

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

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

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

28 69. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved

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

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

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

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

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

27 74. Based on further information and belief, DEFENDANTS issued wage statements to
28 Aggrieved Employees that failed to list the accurate total hours worked whenever shift differential

1 wages were paid in violation of Labor Code section 226.

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

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

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

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

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

7 80. Based on information and belief, DEFENDANTS shifted the costs of doing business
8 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
9 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
10 including but not limited to including but not limited to, purchase and/or maintenance of
11 uniforms/work clothing/shoes/protective and/or safety equipment (e.g., face masks, hairnets and/or
12 gloves) and/or the use of Aggrieved Employees' personal mobile phone and data usage for work
13 related purposes to receive and respond to work related messages and/or phone calls. For example,
14 based on information and belief, Aggrieved Employees were required to receive and respond to
15 work-related calls and/or messages from supervisors and/or other employees regarding scheduling
16 and/or other work tasks but were not reimbursed by DEFENDANTS at all and/or in full for these
17 business expenses.

18 81. Based on information and belief, at times, DEFENDANTS required Aggrieved
19 Employees to use their personal vehicles for work, such as, but not limited to, for driving between
20 DEFENDANTS' restaurants, stores, facilities and/or other locations, completing business errands
21 and/or otherwise carrying out their assigned job duties, however, DEFENDANTS did not provide
22 any/full reimbursement to Aggrieved Employees for all vehicle-related expenses they incurred in
23 connection therewith, including but not limited to, cost of fuel, mileage, and/or vehicle wear and
24 tear.

25 82. Based on information and belief, Aggrieved Employees were not reimbursed for
26 expenses they incurred in connection with the purchase and/or maintenance of uniforms/work
27 clothing/work shoes and/or personal protective/safety gear (e.g., face masks, hairnets and/or gloves)
28 DEFENDANTS required they wear for work and/or for costs incurred as a result of having to

1 purchase their own hand tools required to carry out their assigned job duties.

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

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

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

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

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

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

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

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

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

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

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

1 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
2 used sick leave and the balance of paid sick leave.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 108. Upon separation of employment, Aggrieved Employees' final paychecks were not

1 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
2 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
3 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
4 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
5 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate
6 including non-discretionary compensation, including but not limited to, shift differentials). For
7 example, DEFENDANTS did not furnish PLAINTIFF with any final paycheck for at least
8 approximately three (3) weeks following PLAINTIFF's termination.

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

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

18 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

19 111. Based on information and belief, DEFENDANTS required Aggrieved Employees to
20 agree in writing to unlawful conditions of employment including but not limited to unlawful
21 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
22 violation of Labor Code section 432.5.

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

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

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

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

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

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

27 117. Based on further information and belief, DEFENDANTS knew that requiring
28 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a

1 condition of obtaining and/or holding employment was unlawful.

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

4 Unlawful Inquires into Criminal History

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

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

14 Unlawful PAGA Waiver

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

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

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

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

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

10 **FIRST CAUSE OF ACTION**
11 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
12 **2698, *ET SEQ.***

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

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

16 **Failure to Keep Accurate Records**

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

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

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

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

2 **Meal Period Violations**

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

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

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

19 133. Employers must pay employees an additional hour of wages at the employees’
20 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
21 meal period, first meal period provided after five (5) hours, second meal period provided after 10
22 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to
23 provide an employee a meal period in accordance with the applicable provision of this Order, the
24 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation

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 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

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

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

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

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

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

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

28 **Rest Period Violations**

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

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

25 142. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
26 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
27 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
28 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,

1 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
2 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

19 **Failure to Provide Suitable Resting Facilities**

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

24 148. DEFENDANTS' locations/facilities are generally similar in layout and design, and
25 there was, and continues to be, space that allows for a resting facility that employees may use to
26 cease work and recover during meal or rest periods. DEFENDANTS could have provided
27 PLAINTIFF and Aggrieved Employees with a resting facility within DEFENDANTS'
28 facilities/locations with reasonable or no modification, but instead denied and continues to deny,

1 employees with suitable areas to rest (e.g. a suitable breakroom). As a result, PLAINTIFF and other
2 Aggrieved Employees were forced to adjust to areas not conducive to resting, including but not
3 limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises
4 which are not designated or reserved for their rest, such as their personal vehicles.

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

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

10 **Minimum and Overtime Wage Violations**

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

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

24 153. As explained above, DEFENDANTS violated California's minimum and overtime
25 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
26 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
27 start and end times and meal period start and end times), payment according to scheduled hours
28 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during

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

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

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

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

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

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

26 **Statutory Wage Violations**

27 159. California Labor Code section 223 makes it unlawful for an employer to secretly pay
28 wages lower than required by statute while purporting to pay legal wages. As described above,

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

10 **Refusal to Make Payment**

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

19 **Standard Conditions of Labor Violations**

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

3 **Business Expense Violations**

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

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

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

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

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

28 167. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved

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

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

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

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

14 **Wage Statement Violations**

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

24 172. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
25 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
26 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
27 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
28 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net

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

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

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

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

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

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

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

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

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

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

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

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

26 **Unlawful Deductions**

27 184. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from

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

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

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

12 **Reporting Time Pay Violations**

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

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

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

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

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

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

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

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

16 **Seating Violations**

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

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

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

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

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

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

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

7 196. 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.

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

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

20 198. 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.

25 199. 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.

5 200. 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).

12 201. 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**

16 202. 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.

23 203. 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.

28 204. 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.

4 205. 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.

8 206. 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.

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

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

16 209. 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**

20 210. 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**

28 211. 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.

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

13 **Untimely Payment of Final Wages**

14 213. 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."

21 214. 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).

27 215. 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). For example, DEFENDANTS did not furnish
7 PLAINTIFF with any final paycheck for at least approximately three (3) weeks following
8 PLAINTIFF's termination.

9 216. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
10 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
11 256.

12 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

1 additional forms such as a summary of rights, a way by which to request a copy of the report, as
2 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

20 Unlawful Inquires into Criminal History

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

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

1 application in violation of California law.

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

7 Unlawful PAGA Waiver

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

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

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

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

28 231. Under the provisions of PAGA and the above mentioned Labor Code sections,

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

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

15 232. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
16 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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