

1 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
2 JAMIE SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
3 BRANDON BROUILLETTE, ESQ. (SBN 273156)
bbrouillette@crosnerlegal.com
4 **CROSNER LEGAL, PC**
5 9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
6 Tel: (866) 276-7637
Fax: (310) 510-6429
7

8 Attorneys for Plaintiff ADAM RAMOS
on behalf of the State of California,
9 and others similarly situated and aggrieved

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 ADAM RAMOS, on behalf of the State of
California, and others similarly situated and
13 aggrieved,

14 Plaintiff,

15 v.

16
17 SERVE AUTOMATION INC., a Delaware
Corporation; CULINARY SERVICES OF
18 AMERICA, INC., a California Corporation;
and DOES 1-100, inclusive,

19 Defendants.
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County of Los Angeles
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Executive Officer/Clerk of Court,
By D. Williams, Deputy Clerk

Case No.: **23STCV18704**

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

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

7 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

23 **THE PARTIES**

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

26 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF is a former
27 employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee
28 with a job title of general helper and/or a similar title(s) and/or similar position(s) from in or around

1 August 2022 through on or around April 3, 2023. PLAINTIFF was hired by CULINARY
2 SERVICES OF AMERICA, INC. and assigned to work for various employers, including but not
3 limited to, Defendant SERVE AUTOMATION INC. Based on information and belief, PLAINTIFF
4 worked directly for SERVE AUTOMATION INC. from in or around November 2022 until on or
5 around April 3, 2023. PLAINTIFF worked for DEFENDANTS at, including but not limited to,
6 DEFENDANTS' Hawthorne, California location(s).

7 6. Defendant SERVE AUTOMATION INC. is a Delaware Corporation, that, at all
8 relevant times, was authorized to do business within the State of California and are doing business
9 in the State of California. Based on information and belief, SERVE AUTOMATION INC. operates
10 under the name Stellar Pizza. Defendant SERVE AUTOMATION INC. owns, operates, and/or
11 manages multiple California locations, including but not limited to, the yards, offices, trucks and/or
12 facilities and/or other location(s) in Hawthorne and Gardena, California. Defendant SERVE
13 AUTOMATION INC., through its various locations, serves including but not limited to, the food
14 services industry.

15 7. Defendant CULINARY SERVICES OF AMERICA, INC. is a California
16 Corporation, that, at all relevant times, was authorized to do business within the State of California
17 and is doing business in the State of California.

18 8. Defendant CULINARY SERVICES OF AMERICA, INC. ("Culinary Services of
19 America") is a staffing agency that places workers and/or assigns workers to work in including but
20 not limited to, the food services industry, and with various companies, including but not limited to,
21 individuals assigned/staffed to work for Defendant SERVE AUTOMATION INC. ("Serve
22 Automation"). Based on information and belief, Culinary Services of America operates under the
23 name "Culinary Staffing Service."

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

1 become known.

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

12 **JOINT LIABILITY**

13 11. Under California law, the definition of the terms “to employ” are broadly construed
14 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
15 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
16 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
17 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
18 was to reach situations in which multiple entities control different aspects of the employment
19 relationship. Supervision of the work, in the specific sense of exercising control over how services
20 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
21 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
22 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
23 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
24 California, applying a less stringent standard to what constitutes sufficient control by a business
25 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
26 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
27 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
28

1 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
2 employment,” *Id.* at 875 [emphasis added].

3 12. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and other
4 Aggrieved Employees were jointly employed by DEFENDANTS for purposes of the Wage Orders,
5 under the alternative definitions of “to employ” adopted by the California Supreme Court in
6 *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages, hours
7 and working conditions of PLAINTIFF and the Aggrieved Employees; (2) suffered or permitted
8 PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF and
9 Aggrieved Employees to work for them. PLAINTIFF is informed and believes, and thereon alleges
10 that at all relevant times DEFENDANTS operated as a single integrated enterprise with common
11 ownership and centralized human resources. As a result, DEFENDANTS utilized the same unlawful
12 policies and practices across all of their locations/facilities and subjected all of the Aggrieved
13 Employees to these same policies and practices regardless of the location(s) where they worked.
14 Among other things, PLAINTIFF is informed and believes that: (1) there is common ownership in,
15 and financial control, in DEFENDANTS’ companies, (2) DEFENDANTS utilize common
16 management, who have control over the day-to-day operations and employment matters, including
17 the power to hire and fire, set schedules, issue employee policies, and determine rates of
18 compensation across its locations in California; (3) DEFENDANTS utilize the same policies and
19 procedures for all California employees, including issuing the same employee handbooks and other
20 form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel
21 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.
22 PLAINTIFF is informed and believes, and thereon alleges that at all times relevant to this
23 Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved Employees
24 upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
25 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees’
26 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
27 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
28 Employees. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a

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 the Aggrieved
4 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
5 PLAINTIFF and the Aggrieved Employees in a uniform manner. DEFENDANTS collectively
6 represented to PLAINTIFF and the 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 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 the wage rates of PLAINTIFF and Aggrieved Employees.

14 13. Moreover, based on information and belief, Culinary Services of America hired
15 PLAINTIFF and entered into a written employment agreement with PLAINTIFF. During
16 PLAINTIFF's employment, Culinary Services of America maintained control over many aspects of
17 PLAINTIFF's employment, including, among other things, having the authority to discipline
18 PLAINTIFF, change PLAINTIFF's job assignment, change PLAINTIFF's work hours, change
19 PLAINTIFF's rates of pay, and to terminate PLAINTIFF's employment.

20 14. In addition, when PLAINTIFF was first hired, Culinary Services of America
21 provided PLAINTIFF with orientation and training materials. Culinary Services of America issued
22 PLAINTIFF written policies concerning meal periods, rest breaks, timekeeping, hours worked, and
23 payment of PLAINTIFF's wages, with which PLAINTIFF was required to comply. Based on
24 information and belief, among other things, these policies provided that PLAINTIFF's weekly time
25 records be submitted to Culinary Services of America, and Culinary Services of America was
26 supposed to process PLAINTIFF's time records and pay PLAINTIFF for all hours worked. Culinary
27 Services of America exercised ultimate control over the payment of PLAINTIFF's wages, as
28 Culinary Services of America issued PLAINTIFF his paychecks.

1 15. Finally, Culinary Services of America directed PLAINTIFF to comply with Serve
2 Automation's policies and directions. PLAINTIFF is informed and believes that Culinary Services
3 of America exercised the same control over, applied the same policies and practices, and engaged
4 in the same acts and omissions with regard to the other Aggrieved Employees.

5 16. Serve Automation similarly suffered or permitted PLAINTIFF to work for them or
6 engaged PLAINTIFF to work for them. PLAINTIFF is informed and believes that Serve
7 Automation entered into a written agreement with Culinary Services of America, pursuant to which
8 Serve Automation paid Culinary Services of America to provide it with workers, including
9 PLAINTIFF, to conduct Serve Automation's business operations - namely, to work in Serve
10 Automation's yards, offices, trucks and/or other facilities. Serve Automation suffered or permitted
11 PLAINTIFF to work at Serve Automation and for the entirety of PLAINTIFF's employment.

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

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

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

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

1 **PAGA ALLEGATIONS**

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

- 5 a. All non-exempt workers who were directly employed by Culinary Services of America
6 regardless of where those non-exempt workers were assigned or staffed to work – in
7 California at any time from one year plus 65 days from the filing of the initial Complaint
8 through the present (“PAGA Period”);
- 9 b. All non-exempt workers who were assigned/staffed to work at Serve Automation by
10 Culinary Services of America and/or any other staffing/temporary service agencies at
11 any location in California at any time during the PAGA Period; and
- 12 c. All non-exempt workers who were directly employed by Serve Automation to work at
13 any location in California at any time during the PAGA Period.

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

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

26 23. PLAINTIFF, on June 2, 2023, through counsel, gave written notice by online filing
27 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
28

1 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
2 in this Complaint (“PAGA Notice”).

3 24. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
4 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
5 Employees.

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

9 **FACTUAL ALLEGATIONS**

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

14 27. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF is a former
15 employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee
16 with a job title of general helper and/or a similar title(s) and/or similar position(s) from in or around
17 August 2022 through on or around April 3, 2023. PLAINTIFF was hired by Culinary Services of
18 America and assigned to work for various employers, including but not limited to, Serve Automation
19 dba Stellar Pizza. Based on information and belief, PLAINTIFF worked directly for Serve
20 Automation from in or around November 2022 until on or around April 3, 2023.

21 28. PLAINTIFF worked for DEFENDANTS at DEFENDANTS’ Hawthorne, California
22 location(s). PLAINTIFF regularly worked at least eight (8) to twelve (12) hours per day, at least
23 three (3) to four (4) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time
24 counted by DEFENDANTS as hours worked.

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

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

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

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

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

16 33. For example, PLAINTIFF and other Aggrieved Employees were required to perform
17 other off-the-clock work for which they were not compensated. For example, prior to beginning a
18 scheduled shift, PLAINTIFF was required to start and/or boot all of DEFENDANTS' computer
19 systems and/or time keeping and/or other applications, including but not limited to, applications
20 DEFENDANTS required PLAINTIFF download on his personal cell phone/mobile device so as to
21 have all systems running at the start of the scheduled shift. As such, PLAINTIFF spent at least
22 several minutes before each scheduled shift preparing at least several different work applications in
23 order to clock in and begin his shift. This pre-shift work was off-the-clock and uncompensated
24 resulting in unpaid minimum and overtime wages.

25 34. Also, based on information and belief, at times, DEFENDANTS'
26 electronic/computer/tablet employee time-keeping systems and/or app malfunctioned such that
27 Aggrieved Employees were required to either reinitiate and/or otherwise troubleshoot the
28 system/app prior to being able to clock in and/or were unable to clock in at all for the start of their

1 shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment
2 of wages owed to Aggrieved Employees. Based on information and belief, Aggrieved Employees
3 experienced the same issues when clocking out for shifts and/or back in for meal periods. This time
4 spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid
5 minimum wages owed to Aggrieved Employees.

6 35. For example, at times, DEFENDANT required PLAINTIFF and other Aggrieved
7 Employees to use a company tablet/mobile device to clock in and out for their shifts as well as for
8 meal periods, however, the tablet/mobile device provided by DEFENDANTS regularly
9 malfunctioned such that PLAINTIFF and other Aggrieved Employees were unable to record hours
10 worked at all and/or were unable to record the true start and end times of shifts and/or meal periods,
11 resulting in DEFENDANTS' failure to pay PLAINTIFF and other Aggrieved Employees for all
12 hours worked and the underpayment of wages owed to PLAINTIFF and other Aggrieved
13 Employees.

14 36. Based on information and belief, Aggrieved Employees were required to complete
15 off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they
16 received to their phones/mobile devices and were required to respond to, including but not limited
17 to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the
18 underpayment of wages owed to Aggrieved Employees.

19 37. Based on information and belief, DEFENDANTS did not compensate Aggrieved
20 Employees for time spent donning and doffing personal protective equipment and/or uniforms (e.g.,
21 rubber gloves, hats, and/or face masks) during meal periods, before the start of a scheduled shift,
22 and after completing a scheduled shift, resulting in off-the-clock work and the underpayment of
23 wages owed to Aggrieved Employees.

24 38. Moreover, based on information and belief, Aggrieved Employees who opened their
25 work locations were required to first unlock the doors, turn on all the lights in the
26 restaurant/truck/facility and/or deactivate the alarm before clocking in for work, resulting in pre-
27 shift off-the-clock work and the underpayment of wages owed to Aggrieved Employees. Based on
28 further information and belief, Aggrieved Employees in charge of closing their location(s) were

1 required to first clock out for their shifts before enabling the alarm, turning off all the lights in the
2 facility and/or locking the doors. This resulted in additional off-the-clock post-shift work that was
3 not compensated and the underpayment of wages owed to Aggrieved Employees.

4 39. Based on information and belief, at times, DEFENDANTS requires/required
5 Aggrieved Employees to travel between DEFENDANTS' yards, restaurants, facilities and/or other
6 locations without compensating Aggrieved Employees for the travel time.

7 40. For example, based on information and belief, due to scheduling issues and/or
8 understaffing, Aggrieved Employees were at times required after working at their scheduled facility
9 location to cover a shift at another of DEFENDANTS' yards/restaurants/facilities/locations but were
10 not compensated for the time spent driving to the second yard/restaurant/facility, resulting in the
11 underpayment of minimum and overtime wages owed to Aggrieved Employees.

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

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

17 43. For example, based on information and belief, at times, DEFENDANTS required
18 Aggrieved Employees to work two separate shifts in the same day. Based on information and belief,
19 DEFENDANTS failed to pay Aggrieved Employees split shift compensation whenever
20 PLAINTIFF's and/or other Aggrieved Employees' work schedules were interrupted by non-paid
21 non-working periods established by DEFENDANTS, which resulted in a violation of the applicable
22 Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift,
23 one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that
24 workday...). See, also, Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one
25 (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday,
26 except when the employee resides at the place of employment). DEFENDANTS also failed to
27 separately itemize these split shift premium wages on PLAINTIFF's and/or other Aggrieved
28 Employees' wage statements, in violation of Labor Code sections 510, 1194 and all applicable IWC

1 Wage Orders. See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the
2 premium payment on the pay stub provided to the employee, and it should be shown as a separate
3 category such as “Split Shift Premium” and should not be lumped into another category such as
4 wages, bonus, etc. DEFENDANTS failed to separately account for the split shift premiums earned
5 by PLAINTIFF and/or other Aggrieved Employees on their wage statements.

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

11 45. Based in information and belief, DEFENDANTS implemented a time-rounding
12 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
13 compensable time because the time-rounding system implemented by DEFENDANTS would
14 almost always, if not always, result in understating actual compensable work time.

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

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

26 48. Based on information and belief, DEFENDANTS failed and continue to fail to pay
27 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours
28 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in

1 a work week, in violation of California's overtime laws.

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

7 50. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
8 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
9 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
10 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
11 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
12 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
13 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
14 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
15 completely.

16 51. For example, based on information and belief, PLAINTIFF and other Aggrieved
17 Employees were forced to take late meal periods in order to complete assigned job duties. Based on
18 information and belief, PLAINTIFF and other Aggrieved Employees were at times interrupted
19 during purported meal periods and/or had meal periods cut short and/or restricted to
20 DEFENDANTS' premises due to the need to continue assigned job duties.

21 52. Based on information and belief, DEFENDANTS manipulated and/or edited time
22 records so it would appear as though Aggrieved Employees had taken an uninterrupted, off-duty,
23 thirty minute meal period before the end of the fifth hour of work each shift even though
24 DEFENDANTS had actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
25 Employees were frequently required to work through their owed meal periods and/or take
26 interrupted and/or shortened meal periods and/or meal periods during which Aggrieved Employees
27 were not relieved of all duties and DEFENDANTS' control.

28 53. Based on information and belief, other times, DEFENDANTS instructed Aggrieved

1 Employees to edit and/or manipulate their own time records so it would appear as though
2 PLAINTIFF and other Aggrieved Employees had taken an uninterrupted, off-duty, thirty minute
3 meal period before the end of the fifth hour of work each shift even though DEFENDANTS had
4 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees were
5 frequently required to work through their owed meal periods and/or, take interrupted and/or
6 shortened meal periods and/or meal periods during which Aggrieved Employees were not relieved
7 of all duties and DEFENDANTS' control.

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

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

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

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

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

28 59. For example, when PLAINTIFF worked shifts lasting longer than ten (10) and/or

1 twelve (12) hours, PLAINTIFF was frequently not afforded a second off-duty, uninterrupted meal
2 period of thirty minutes in length.

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

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

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

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

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

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

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

4 66. Based on information and belief, DEFENDANTS did not have a have a compliant
5 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
6 practice.

7 67. For example, based on information and belief, Aggrieved Employees were at times,
8 unable to take compliant rest periods due to their need to complete assigned job duties and/or were
9 unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods
10 restricted to DEFENDANTS' premises.

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

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

17 70. Based on information and belief, DEFENDANTS implemented policies and/or
18 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
19 DEFENDANTS' control during rest periods.

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

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

1 compensation for purposes of calculating the owed rest period premium.

2 73. **Cooldown Recovery Period Violations.** California Code of Regulations, Title 8,
3 section 3395 mandates that all employers with “outdoor places of employment” implement a heat
4 illness prevention program that includes, among other requirements, providing workers “cool-
5 down” periods of at least five minutes in the shade. Specifically, section 3395 provides that
6 “employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of
7 no less than five minutes at a time when they feel the need to do so to protect themselves from
8 overheating” and that “such access to shade shall be permitted at all times.” Under California Labor
9 Code section 226.7, if an employer fails to provide an employee a recovery period, the employer
10 shall pay the employee one additional hour of pay at the employee’s regular rate of compensation
11 for each workday that the meal or rest or recovery period is not provided.

12 74. Based on information and belief, Aggrieved Employees were required to spend
13 multiple hours at a time outdoors in significantly high temperature heat conditions. DEFENDANTS
14 failed to provide proper heat illness prevention training and/or heat illness
15 policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8
16 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
17 California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
18 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
19 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
20 shade for extended periods of time. In addition, DEFENDANTS, failed to pay Aggrieved
21 Employees with an additional hour of pay at their respective regular rate(s) of pay for each missed
22 cooldown recovery period.

23 75. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC
24 Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the
25 Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the
26 toilet rooms and shall be available to employees during work hours.”

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

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

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

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

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

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

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

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

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

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

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

27 86. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved
28 Employees that were not accurate and did not include all of the statutorily required information. As

1 such, DEFENDANTS violated Labor Code section 226.

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

11 88. **Failure to Produce Employment Records.** Based on information and belief,
12 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
13 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code
14 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
15 counsel, sent a written request for payroll and personnel records to DEFENDANTS. Yet,
16 DEFENDANTS failed to timely produce complete records within the time periods delineated by
17 California labor law. Based on information and belief, DEFENDANTS failed and continues to fail
18 to timely produce complete payroll and personnel records when requested by other Aggrieved
19 Employees. Based on information and belief, DEFENDANTS failed and continue to fail to timely
20 produce complete time, pay, and personnel records when requested by other Aggrieved Employees.

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

1 90. DEFENDANTS have failed and continue to fail to keep accurate and complete
2 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
3 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
4 employer control during unpaid meal periods, failure to record the true start and end times of meal
5 periods, shift start times and shift end times, and other off-the-clock work policies and practices
6 described herein.

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

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

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

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

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

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

11 96. Based on information and belief, DEFENDANTS shifted the costs of doing business
12 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
13 to, purchase and/or maintenance of uniforms/work clothing/shoes/protective and/or safety
14 equipment (e.g., face masks and/or gloves) and/or the use of Aggrieved Employees' personal mobile
15 phone and data usage for work-related purposes to receive and respond to work related messages
16 and/or phone calls.

17 97. For example, based on information and belief, Aggrieved Employees were required
18 to receive and respond to work-related calls and/or messages from supervisors and/or other
19 Aggrieved Employees regarding scheduling and/or other work tasks but were not reimbursed by
20 DEFENDANTS at all and/or in full for these business expenses. Also, DEFENDANTS required
21 PLAINTIFF to download and use on most if not all workdays during the relevant period at least
22 several applications on his personal cell phone/mobile device, including but not limited to, employee
23 timekeeping applications, among others. However, DEFENDANTS failed to provide any
24 reimbursement for DEFENDANTS' business use of PLAINTIFF's personal cell phone/mobile
25 device. Based on information and belief, DEFENDANTS have a uniform policy and practice of
26 failing to provide any and/or full reimbursement to Aggrieved Employees for expenses incurred as
27 a result of DEFENDANTS' business use of their personal cellphones/mobile devices.

28 98. Based on information and belief, at times, DEFENDANTS required Aggrieved

1 Employees to use their personal vehicles for work, such as, but not limited to, for driving between
2 DEFENDANTS's yards, facilities and/or locations, completing business errands and/or otherwise
3 carrying out their assigned job duties, however, DEFENDANTS did not provide any/full
4 reimbursement to Aggrieved Employees for all vehicle-related expenses they incurred in connection
5 therewith, including but not limited to, cost of fuel, mileage, and/or vehicle wear and tear.

6 99. Based on further information and belief, DEFENDANTS failed to provide
7 reimbursement / full reimbursement for expenses Aggrieved Employees incurred as a result of
8 working for DEFENDANTS remotely and/or from their homes, including but not limited to, cost of
9 internet service, home electricity, cost of additional memory and/or virus software for home
10 computer / home computer use, among other business expenses associated with remote work as
11 required by DEFENDANTS.

12 100. For example, based on information and belief, DEFENDANTS required Aggrieved
13 Employees to work remotely, including but not limited to, from their homes. As a result of working
14 from home, Aggrieved Employees were required to use their home internet, electricity, and other
15 utilities in the discharge of their job duties. Based on information and belief, DEFENDANTS lacked
16 and continue to lack a policy to reimburse employees who regularly increased utility expenses as a
17 result of working from home. Aggrieved Employees' increased utility and internet expenses were
18 expenses for which DEFENDANTS were required to reimburse Aggrieved Employees a reasonable
19 percentage based on their required business use because said expenses were necessarily incurred by
20 Aggrieved Employees as a direct consequence of the discharge of their duties of employment.

21 101. Based on information and belief, DEFENDANTS regularly failed to reimburse and
22 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
23 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
24 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
25 assigned by DEFENDANTS.

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

1 2802.

2 103. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
3 provides as follows:

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

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

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

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

26 108. Based on information and belief, DEFENDANTS have and continue to have a
27 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
28 consecutively in a workweek, in violation of including but not limited to, Labor Code Section

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

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

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

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

27 112. Upon information and belief, DEFENDANTS failed and continue to fail to comply
28 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with

1 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
2 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
3 wages.

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

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

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

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

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

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

26 117. Suitable seating is one of the worker protections covered by California's Wage
27 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
28 construed to effectuate the goal of protecting the comfort and welfare of employees. Brinker

1 Restaurant Corp. v. Superior Court, 53 Cal.4th 1004, 1027 (2012).

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

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

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

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

24 122. Based on information and belief, DEFENDANTS charges an additional service
25 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
26 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
27 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
28 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*

1 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
2 constitute a gratuity that is intended to the employees providing the service).

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

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

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

18 126. Upon separation of employment, Aggrieved Employees' final paychecks were not
19 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
20 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
21 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
22 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
23 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate
24 including non-discretionary compensation, including but not limited to, shift differentials).

25 127. For example, DEFENDANTS did not furnish PLAINTIFF with any final paycheck
26 for at least two (2) days following PLAINTIFF's termination, and PLAINTIFF's late final paycheck
27 was devoid of all wages owed, including but not limited to, all owed minimum wages, overtime
28 wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly

1 accrued rates, (including but not limited to, all owed vacation pay/paid time off paid at the final rate
2 including non-discretionary compensation, including but not limited to, any shift differentials).

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

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

12 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

1 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
2 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
3 FCRA when conducting background screenings for applicants, including but not limited to
4 Aggrieved Employees that were subject to a background check as a condition of employment during
5 the application phase.

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

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

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

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

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

1 Unlawful Inquires into Criminal History

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

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

11 Unlawful PAGA Waiver

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

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

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

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

1 required written agreement to an unlawful provision as a condition of employment which is a
2 violation of labor code section 432.5.

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

7
8 **FIRST CAUSE OF ACTION**
9 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
10 **2698, *ET SEQ.***

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

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

14 **Failure to Keep Accurate Records**

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

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

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

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

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

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

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

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

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

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

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

7 **Meal Period Violations**

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

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

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

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

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

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

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

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

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

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

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

1 **Rest Period Violations**

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

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

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

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

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

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

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

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

20 **Cooldown Recovery Period Violations**

21 170. California Code of Regulations, Title 8, section 3395 mandates that all employers
22 with "outdoor places of employment" implement a heat illness prevention program that includes,
23 among other requirements, providing workers "cool-down" periods of at least five minutes in the
24 shade. Specifically, section 3395 provides that "employees shall be allowed and encouraged to take
25 a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the
26 need to do so to protect themselves from overheating" and that "such access to shade shall be
27 permitted at all times." Under California Labor Code section 226.7, if an employer fails to provide
28 an employee a recovery period, the employer shall pay the employee one additional hour of pay at

1 the employee's regular rate of compensation for each workday that the meal or rest or recovery
2 period is not provided.

3 171. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
4 required to spend multiple hours at a time outdoors in significantly high temperature heat conditions.
5 DEFENDANTS failed to provide proper heat illness prevention training and/or heat illness
6 policies/practices/programs as required by California's Heat Illness Prevention statute, Title 8
7 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
8 California's Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
9 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
10 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
11 shade for extended periods of time. In addition, DEFENDANTS, failed to pay PLAINTIFF and
12 other Aggrieved Employees with an additional hour of pay at PLAINTIFF's regular rate of pay for
13 each missed cooldown recovery period.

14 **Failure to Provide Suitable Resting Facilities**

15 172. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be
16 provided in an area separate from the toilet rooms and shall be available to employees during work
17 hours."

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

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

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

4 **Minimum and Overtime Wage Violations**

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

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

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

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

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

1 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and
2 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
3 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
4 Employees.

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

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

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

20 **Failure to Provide Written Commission Agreements**

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

26 185. Based on information and belief, DEFENDANTS failed to provide Aggrieved
27 Employees who were compensated on a commission basis with proper written commission
28 agreements, in violation of Labor Code section 2751.

1 **Violation of Labor Code Section 226.2**

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

13 187. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
14 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
15 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
16 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
17 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
18 226.2.

19 **Statutory Wage Violations**

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

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

3 **Refusal to Make Payment**

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

12 **Standard Conditions of Labor Violations**

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

21 **Business Expense Violations**

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

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

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

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

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

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

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

24 197. 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.

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

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

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

7 **Wage Statement Violations**

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

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

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

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

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

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

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

22 206. 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.

24 207. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
25 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
26 Employees over whether they received all wages owed to them.

27 208. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
28 they could not easily determine whether they received all wages owed to them and whether they

1 were paid for all hours worked.

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

5 210. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
6 Aggrieved Employees with accurate, itemized wage statements.

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

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

19 **Unlawful Deductions**

20 213. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
21 an employee any part of wages theretofore paid by said employer to said employee." Based on
22 information and belief, DEFENDANTS made unlawful deductions from Aggrieved Employees
23 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
24 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
25 Section 2699.

26 214. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
27 each pay period during which the statute provisions were violated. See Lab. Code §225.5

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

1 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
2 provided in this article, every person who unlawfully withholds wages due any employee in
3 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
4 to pay each employee”).

5 **Reporting Time Pay Violations**

6 215. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

25 **Violation of California Day of Rest Law**

26 219. Under California law, every employee in California is "entitled" to "one day's rest
27 [from labor] in seven"; and, no employer may "cause" its employees "to work more than six days in
28 seven." See Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of

1 the foregoing sections is a misdemeanor.

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

8 **Seating Violations**

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

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

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

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

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

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

26 225. Moreover, based on information and belief, the nature of the work reasonably
27 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
28 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of

1 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
2 of seats would not interfere with the performance of their duties.

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

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

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

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

24 229. Based on information and belief, DEFENDANTS charges an additional service
25 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
26 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
27 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
28 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*

1 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
2 constitute a gratuity that is intended to the employees providing the service).

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

6 **Sick Leave Violations**

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

14 232. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
15 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
16 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
17 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
18 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

23 234. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
24 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
25 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
26 were entitled to the maximum number of hours accruable.

27 235. Upon information and belief, DEFENDANTS failed and continue to fail to comply
28 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with

1 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
2 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
3 wages.

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

5 237. On information and belief, PLAINTIFF alleges that all of these practices were
6 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

25 241. Based on information and belief, DEFENDANTS had and continue to have a
26 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
27 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
28 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-

1 discretionary compensation, including but not limited to, shift differentials) to Aggrieved
2 Employees upon separation of employment, in violation of California law, including but not limited
3 to, Labor Code section 227.3.

4 **Untimely Payment of Final Wages**

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

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

18 244. Based on information and belief, DEFENDANTS failed and continue to fail to timely
19 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
20 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF
21 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not
22 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
23 sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all
24 owed vacation pay/paid time off paid at the final rate including non-discretionary compensation,
25 including but not limited to, shift differentials).

26 245. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
27 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
28 256.

1 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

23 248. 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 them to
25 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
26 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

27 249. Based on information and belief, DEFENDANTS required Aggrieved Employees to
28 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of

1 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

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

7 251. Based on further information and belief, DEFENDANTS knew that requiring
8 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
9 condition of obtaining and/or holding employment was unlawful.

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

12 Unlawful Inquires into Criminal History

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

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

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

27 Unlawful PAGA Waiver

28 256. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring

1 Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited
2 to, an unlawful waiver of PAGA and/or representative actions as a condition of employment.

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

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

14 259. Upon information and belief, DEFENDANTS required Aggrieved Employees to
15 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
16 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS
17 required written agreement to an unlawful provision as a condition of employment which is a
18 violation of labor code section 432.5.

19 260. Under the provisions of PAGA and the above mentioned Labor Code sections,
20 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.2,
21 226.7, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1,
22 1198, 1198.5, 1199, 2699, 2699.3, 2751, 2802, 2810.5 and all applicable Wage Orders as well as
23 all interpretations of these laws by California Courts and administrative bodies, as well as any other
24 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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

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

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

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PRAYER FOR RELIEF

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

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

Dated: August 7, 2023

CROSNER LEGAL, PC

By: 
Zachary M. Crosner, Esq.
Jamie Serb, Esq.
Brandon Brouillette, Esq.
Attorneys for Plaintiff
ADAM RAMOS