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15
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF LOS ANGELES**

18 LUZ DE ARIAS, as an individual and on
19 behalf of all others similarly situated,

20 Plaintiff,

21 v.

22 TULAPHORN, INC., a California
23 Corporation; and DOES 1-100, inclusive,

24 Defendants.

Case No.: 23STCV15445

25 **FIRST AMENDED CLASS AND**
26 **REPREENATIVE ACTION COMPLAINT**
27 **FOR:**

- 28 **1. Recovery of Unpaid Minimum Wages and Liquidated Damages;**
- 2. Recovery of Unpaid Overtime Wages;**
- 3. Failure to Provide Meal Periods;**
- 4. Failure to Provide Rest Periods;**
- 5. Violations of Labor Code § 226;**
- 6. Failure Timely to Pay All Wages Due upon Separation of Employment;**
- 7. Failure to Reimburse Business Expenses;**
- 8. Unfair Competition; and**
- 9. Violations of the Private Attorneys General Act, Labor Code § 2698, et seq.**

DEMAND FOR JURY TRIAL

Complaint filed: July 3, 2023
Trial date: None set

FILED
Superior Court of California
County of Los Angeles

10/18/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

1 Plaintiff LUZ DE ARIAS (“PLAINTIFF”), as an individual and on behalf of all other
2 similarly situated Class Members (as defined below), hereby files this Complaint against
3 Defendants TULAPHORN, INC., a California Corporation, and DOES 1-100, inclusive,
4 (collectively “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as
5 follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5
9 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
10 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged
11 herein by PLAINTIFF occurred in this this judicial district. *See also Crestwood Behavioral Health,*
12 *Inc. v. Superior Court* (2021) 60 Cal. App. 5th 1069 (venue in a PAGA action is proper in any
13 county where the defendants committed Labor Code violations against some of its employees).

14 **THE PARTIES**

15 2. PLAINTIFF is, and at all relevant times was, an individual domiciled in the State of
16 California and a citizen of the State of California.

17 3. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
18 DEFENDANTS as a non-exempt employee with a job title of janitor and/or a similar title(s) and/or
19 position(s) from approximately 2018 through April 2023. PLAINTIFF worked for DEFENDANTS
20 at DEFENDANTS’ Bellflower, California location(s), which operates under the name
21 “McDonald’s.” PLAINTIFF regularly worked at least eight (8) hours per day, at least four (4) to
22 five (5) days per week.

23 4. DEFENDANTS are a California Corporation that, at all relevant times, were
24 authorized to do business within the State of California and are doing business in the State of
25 California.

26 5. DEFENDANTS own, operate, manage, and/or staff restaurants, offices, facilities,
27 and/or other location(s) in California, including the restaurants, offices, facilities, and/or other
28 locations in Bellflower California, operating under the name “McDonald’s.” DEFENDANTS,

1 through their various locations, serve the restaurant, restaurant management, and/or food services
2 industry.

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

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

19 **JOINT LIABILITY**

20 8. Under California law, the definition of the terms “to employ” are broadly construed
21 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
22 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
23 to engage, thereby creating a common law employment relationship. *See Martinez v. Combs* (2010)
24 49 Cal.4th 35, 64. “Employer” is defined in terms of exercising control to reach situations in which
25 multiple entities control different aspects of the employment relationship. Supervision of the work
26 by exercising control over how services are properly performed is properly viewed as one of the
27 “working conditions” mentioned in the Wage Order. *Id.* at 76. A joint employer relationship exists,
28 for example, when one entity (such as a temporary employment agency) hires and pays a worker,

1 and the other entity supervises the work. *Id.* Moreover, the California Court of Appeal recently
2 broadened the test for joint employment in California, applying a less stringent standard to what
3 constitutes sufficient control by a business over its vendor’s employees’ wages and working
4 conditions to render that business liable as a joint employer. *See Medina v. Equilon Enterprises,*
5 *LLC* (2021) 68 Cal. App. 5th 868; “[i]f the putative joint employer instead exercises enough control
6 over the intermediary entity to *indirectly* dictate the wages, hours, or working conditions of the
7 employee, that is a sufficient showing of joint employment.” *Id.* at 875 [emphasis added].

8 9. At all relevant times, for purposes of the Wage Orders, PLAINTIFF and putative
9 Class Members (defined below) were jointly employed by DEFENDANTS under the alternative
10 definitions of “to employ” adopted by the California Supreme Court in *Martinez, supra*. As
11 discussed below, DEFENDANTS (1) exercised control over wages, hours, and working conditions
12 of PLAINTIFF and Class Members, (2) suffered or permitted PLAINTIFF and Class Members to
13 work, and/or (3) engaged PLAINTIFF and Class Members to work for DEFENDANTS.

14 10. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times
15 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
16 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
17 across all of their locations/facilities and subjected all Class Members to these same policies and
18 practices regardless of the location(s) where they worked. Among other things, PLAINTIFF is
19 informed and believes that: (1) there is common ownership and financial control in DEFENDANTS’
20 companies, (2) DEFENDANTS utilize common management, who have control over the day-to-
21 day operations and employment matters, including the power to hire and fire, set schedules, issue
22 employee policies, and determine rates of compensation across its locations in California, (3)
23 DEFENDANTS utilize the same policies and procedures for all California employees, including
24 issuing the same employee handbooks and other form agreements, (4) DEFENDANTS use at least
25 some of the same Human Resources personnel and attorneys to oversee employment matters, and
26 (5) DEFENDANTS share employees.

27 11. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times
28 DEFENDANTS were the joint employers of PLAINTIFF and the Class Members upon whose

1 behalf PLAINTIFF brings these allegations and causes of action, in that DEFENDANTS exercised
2 sufficient control over PLAINTIFF and Class Members' wages, hours, and working conditions
3 and/or suffered or permitted PLAINTIFF and Class Members to work so as to be considered joint
4 employers of PLAINTIFF and Class Members.

5 12. On information and belief, PLAINTIFF alleges that DEFENDANTS created a
6 uniform set of policies, practices, and/or procedures concerning, *inter alia*, hourly and overtime pay,
7 timekeeping, meal and rest periods, and reimbursement of business expenses, and other working
8 conditions that were distributed and/or applied in the same way to PLAINTIFF and Class Members.
9 PLAINTIFF alleges further that DEFENDANTS compensated and controlled the wages of
10 PLAINTIFF and Class Members in a uniform manner. DEFENDANTS collectively represented to
11 PLAINTIFF and Class Members that each was an "at-will" employee of DEFENDANTS and that
12 DEFENDANTS collectively retained the right to terminate PLAINTIFF and Class Members'
13 employment with or without cause. On information and belief, DEFENDANTS further collectively
14 represented in writing to PLAINTIFF and Class Members the details of their compensation, the
15 manner in which they were to take meal and rest periods, DEFENDANTS' timekeeping procedures,
16 and the policies by which DEFENDANTS collectively would evaluate the wage rates of
17 PLAINTIFF and Class Members.

18 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours,
19 and working conditions of PLAINTIFF and Class Members. As such, DEFENDANTS collectively
20 held the right to control virtually every aspect of PLAINTIFF and Class Members' employment,
21 including the uniform policies, practices, and procedures that resulted in the unlawful conduct for
22 which PLAINTIFF seeks relief in this Complaint.

23 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
24 control over, applied the same policies and practices to, and engaged in the same acts and omissions
25 with regard to all Class Members.

26 **CLASS ALLEGATIONS**

27 15. PLAINTIFF brings this class action on behalf of herself and all others similarly
28 situated, pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to represent

1 is defined as follows (“Class” or “Class Members”):

2 All current and former non-exempt employees that worked either
3 directly or via a staffing agency for any one or more of the
4 DEFENDANTS at any location in California at any time within the
5 four years prior to the filing of the initial Complaint (“Class Period”).

6 a. Numerosity. While the exact number of Class Members is unknown to
7 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
8 all members is impractical under the circumstances of this case. PLAINTIFF is
9 informed and believes the Class consists of at least 100 individuals.

10 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
11 because common questions of law and fact predominate over individual issues.
12 Common questions include the following: (1) whether DEFENDANTS
13 understated hours worked and failed to pay all amounts due to PLAINTIFF and
14 Class Members for wages, including minimum and overtime wages, earned and
15 owed under California law; (2) whether DEFENDANTS provided PLAINTIFF
16 and Class Members with all meal periods or premium payments in lieu thereof
17 in compliance with California law; (3) whether DEFENDANTS provided
18 PLAINTIFF and Class Members with all rest periods or premium payments in
19 lieu thereof in compliance with California law; (4) whether DEFENDANTS
20 provided PLAINTIFF and Class Members with accurate, itemized wage
21 statements in compliance with California law, displaying, among other items,
22 the total hours worked during the pay period; (5) whether DEFENDANTS
23 timely paid PLAINTIFF and Class Members all wages due upon separation of
24 employment; (6) whether DEFENDANTS failed to reimburse PLAINTIFF and
25 Class Members for all necessarily-incurred business expenses; and (7) whether
26 DEFENDANTS’ alleged violations constitute unfair and unlawful business
27 practices under the Unfair Competition Law (“UCL”), Bus. & Prof. Code §
28 17200, *et seq.*

- 1 c. Ascertainable Class. The proposed Class is ascertainable, as members can be
2 identified and located using information in DEFENDANTS' business, payroll,
3 and personnel records.
- 4 d. Typicality. PLAINTIFF's claims are typical of Class Members' claims.
5 PLAINTIFF and Class Members suffered identical or substantially similar
6 injury as a result of DEFENDANTS' common practices, including failure to
7 calculate and pay all owed minimum and overtime wages, failure to provide
8 proper meal periods and rest periods or premium wages in lieu thereof, failure
9 to provide accurate wage statements, failure to reimburse business expenses, and
10 failure timely to pay all wages due upon separation of employment.
- 11 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of absent
12 Class Members. PLAINTIFF has no interests adverse to the interests of other
13 Class Members. Counsel who represent PLAINTIFF are competent and
14 experienced in litigating similar class actions and are attorneys in good standing
15 with the California State Bar. Counsel for PLAINTIFF have the experience and
16 resources to prosecute this case vigorously.
- 17 f. Superiority. A class action is superior to other available means for the fair and
18 efficient adjudication of this controversy since individual joinder of all Class
19 Members is impractical. Class action treatment will permit a large number of
20 similarly situated persons to prosecute their common claims in a single forum
21 simultaneously, efficiently, and without the unnecessary duplication of effort
22 and expense that numerous individual actions would engender. Furthermore, as
23 the damages suffered by each individual Class Member may be relatively small,
24 the expenses and burden of individual litigation would make it difficult or
25 impossible for such individuals to redress the wrongs done to them, while an
26 important public interest will be served by addressing the matter as a class
27 action. The cost to the court system of adjudicating such individualized litigation
28 would be substantial and present the potential for inconsistent or contradictory

1 judgments. Finally, the alternative of filing a claim with the California Labor
2 Commissioner is not superior, given the lack of discovery in such proceedings,
3 the fact that there are fewer available remedies, and the losing party has the right
4 to a trial de novo in the Superior Court.

5 **PAGA ALLEGATIONS**

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

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

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

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

26 18. On July 27, 2023, PLAINTIFF, through counsel, gave notice to the Labor Workforce
27 and Development Agency (“LWDA”), via submission online, that DEFENDANTS failed to comply
28 with California’s labor laws as alleged in this Complaint (“PAGA Notice”), Case No. LWDA-CM-

1 971143-23.

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

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

10 21. PLAINTIFF seeks to recover PAGA civil penalties through a representative action
11 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th
12 969, and class certification is not required.

13 **FACTUAL AND LEGAL ALLEGATIONS**

14 22. At all relevant times, PLAINTIFF, and each Class Member worked for
15 DEFENDANTS in the State of California, and DEFENDANTS exercised control over and suffered
16 and/or permitted PLAINTIFF and Class Members to work.

17 23. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
18 DEFENDANTS as a non-exempt employee with a job title of janitor and/or a similar title(s) and/or
19 position(s) from approximately 2018 through April 2023 at DEFENDANTS' Bellflower, California
20 location(s). PLAINTIFF regularly worked at least eight (8) hours per day, at least four (4) days per
21 week. DEFENDANTS paid PLAINTIFF an hourly rate for hours worked and recorded.

22 24. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
23 PLAINTIFF and Class Members for all hours worked because not all hours were accurately
24 recorded, resulting in the underpayment of minimum and overtime wages. DEFENDANTS failed
25 to record all hours worked by PLAINTIFF and Class Members by virtue of DEFENDANTS'
26 timekeeping policies, including automatic deduction and rounding, as explained below.

27 25. On information and belief, DEFENDANTS implemented a policy and/or practice of
28 rounding meal period start and end times and/or automatically deducting at least thirty minutes per

1 shift for meal periods, despite having actual and/or constructive knowledge that PLAINTIFF and
2 other Class Members were not provided the opportunity to take all lawful meal periods to which
3 they are entitled, thereby depriving PLAINTIFF and Class Members of all wages earned and owed.

4 26. On information and belief, Class Members were not paid for all hours worked due to
5 DEFENDANTS' policy and/or practice of compensating hours scheduled instead of actual hours
6 worked and/or policies and/or practices that resulted in off-the-clock work.

7 27. For example, on information and belief, DEFENDANTS would unlawfully edit
8 PLAINTIFF and other Class Members' timekeeping records to show timely, duty-free 30-minute
9 meal periods, notwithstanding the fact that DEFENDANTS had actual and/or constructive
10 knowledge that DEFENDANTS failed to provide PLAINTIFF and other Class all lawful meal
11 periods to which they were entitled.

12 28. On information and belief, DEFENDANTS required Class Members to be at their
13 assigned workstations ready to work at the start of a scheduled shift, thereby forcing Class Members
14 to gather work-related equipment and/or safety gear, set up and/or clean their workstations, and/or
15 complete other necessary tasks prior to clocking in/signing in, thereby resulting in pre-shift off-the-
16 clock work.

17 29. On information and belief, Class Members were sometimes required to assist
18 customers and/or perform other tasks while clocked out for meal periods, before clocking in for the
19 start of their shifts, and/or after clocking out for the end of their shifts, resulting in DEFENDANTS'
20 failing to record all hours worked and the underpayment of minimum and overtime wages owed to
21 Class Members.

22 30. On information and belief, Class Members were sometimes required to complete
23 other tasks outside of scheduled shifts, including responding to work-related phone calls and/or
24 messages they received to their phones/mobile devices. DEFENDANTS thereby failed to maintain
25 accurate records of all hours worked, resulting in the underpayment of wages owed to Class
26 Members.

27 31. On information and belief, DEFENDANTS did not compensate Class Members for
28 time spent donning and doffing personal protective equipment and/or uniforms (e.g., rubber gloves,

1 hairnets, aprons, hats, and/or face masks) while clocked out for meal periods, before clocking in at
2 the start of a scheduled shift, and/or after clocking out of a scheduled shift, resulting in the
3 underpayment of wages owed to Class Members.

4 32. On information and belief, DEFENDANTS required Class Members to undergo
5 COVID-19 temperature screenings and/or complete questionnaires prior to clocking/signing in,
6 thereby resulting in pre-shift off-the-clock work.

7 33. PLAINTIFF and other Class Members were required to perform other off-the-clock
8 work for which they were not compensated. For example, on information and belief,
9 DEFENDANTS' electronic employee time-keeping system/app sometimes malfunctioned, and
10 Class Members were required either to reinitiate or troubleshoot the system before they could clock
11 in/out. At such times, Class Members were unable to clock in at all for the start of their shifts and/or
12 at the end of their meal periods, resulting in off-the-clock work and the underpayment of wages
13 earned and owed. On information and belief, Class Members experienced the same issues when
14 clocking out for shifts. This time spent under DEFENDANTS' control was not recorded and thus
15 not compensated, resulting in unpaid minimum wages owed to Class Members.

16 34. On information and belief, DEFENDANTS failed to provide all duty-free rest
17 periods to which PLAINTIFF and other Class Members were entitled, resulting in work performed
18 off-the-clock and DEFENDANTS' failure to pay all minimum and overtime wages owed to
19 PLAINTIFF and other Class Members.

20 35. Moreover, on information and belief, Class Members who worked first or opening
21 shifts were required to perform tasks, including unlock the doors, turn on all the lights, and/or
22 deactivate the alarm, before clocking in for work, resulting in pre-shift off-the-clock work and the
23 underpayment of wages owed.

24 36. On further information and belief, Class Members who worked closing shifts were
25 required to perform tasks, including enabling the alarm, turning off all the lights, and/or locking the
26 doors, after clocking out. This off-the-clock work post-shift was not recorded and thus not
27 compensated, resulting in the underpayment of wages owed to Class Members.

28 37. On information and belief, Class Members were required to complete other tasks

1 after clocking out for the workday and/or for meal periods, resulting in work that was not recorded
2 and the underpayment of minimum and overtime wages owed to Class Members. For example, on
3 information and belief, DEFENDANTS required Class Members to clock out for the end of their
4 shifts but to continue working, including by assisting customers, cleaning and/or organizing their
5 work stations/areas, providing shift status updates and/or debriefings, participating in work
6 meetings, and responding to work-related communications, which necessarily resulted in the
7 underpayment of minimum wages and overtime wages owed to Class Members.

8 38. On information and belief, DEFENDANTS sometimes required, and still require,
9 Class Members to travel between DEFENDANTS' locations without compensating Class Members
10 for travel time. For example, on information and belief, scheduling practices and/or understaffing
11 required Class to work one shift then travel to cover another shift at a different location. On such
12 occasions, DEFENDANTS failed to compensate Class Members for the time spent travelling to the
13 second location, resulting in the underpayment of minimum and overtime wages owed to Class
14 Members.

15 39. Section 4 of all applicable Wage orders states, "When an employee works a split
16 shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for
17 that workday...). *See, also*, Cal. Code Regs. Tit. 8, § 11050. On information and belief, and at all
18 relevant times, DEFENDANTS failed to pay Class Members premium wages when they worked
19 split shifts, defined as a work schedule that is interrupted by non-paid and non-working time periods
20 established by the employer. For example, on information and belief, DEFENDANTS sometimes
21 required Class Members to work two shifts in the same workday, separated by more than the
22 duration of a meal period and to the employer's benefit. On information and belief, DEFENDANTS
23 failed to pay Class Members premium wages for such split shifts.

24 40. DEFENDANTS also failed to specifically to identify these premium wages as split
25 shift premiums on Class Members' wage statements, in violation of Labor Code §§ 510, 1194 and
26 all applicable Wage Orders.¹

27 41. On information and belief, DEFENDANTS failed to pay Class Members for time
28

¹ DIR, "Split Shift," https://www.dir.ca.gov/dlse/split_shift.htm (last visited Oct. 11, 2023).

1 they were required to spend completing orientation, policy questionnaires, and/or time spent
2 completing the onboarding process, including reviewing various documents and policies provided
3 by DEFENDANTS, because not all such time was recorded.

4 42. On further information and belief, DEFENDANTS implemented a uniform rounding
5 system that often resulted in understating hours worked, thereby depriving PLAINTIFF and other
6 Class Members of all wages earned and owed.

7 43. DEFENDANTS' failure to pay for all time worked by virtue of its timekeeping and
8 meal and rest period practices and policies resulted not only in the underpayment of minimum wages
9 owed to PLAINTIFF and Class Members, but also in the underpayment of overtime wages for those
10 Class Members who worked more than eight (8) hours in a day and/or more than forty (40) hours in
11 a week.

12 44. On information and belief, DEFENDANTS had actual and/or constructive
13 knowledge that its timekeeping and meal and rest period policies and practices resulted in the
14 underpayment of minimum wages owed to PLAINTIFF and other Class Members because not all
15 hours were recorded accurately, in violation of California law.

16 45. On information and belief, DEFENDANTS failed and continue to fail to pay Class
17 Members two times their regular rate of pay for hours worked beyond twelve (12) in a workday and
18 beyond eight (8) on the seventh consecutive day of work in a workweek, in violation of California's
19 overtime laws.

20 46. On information and belief, DEFENDANTS failed to incorporate all non-
21 discretionary remuneration, including shift differentials and bonuses, into the regular rate of pay
22 calculation, resulting in the underpayment of overtime wages owed to PLAINTIFF and other Class
23 Members

24 47. **Meal Period Violations.** PLAINTIFF and other Class Members consistently worked
25 shifts of at least five and one-half (5½) hours, entitling them to at least one duty-free 30-minute meal
26 period. However, on information and belief, PLAINTIFF and other Class Members were
27 consistently unable to take timely, duty-free 30-minute first and second meal periods, often being
28 forced to take meal periods late and/or work through part or all their meal periods due to

1 understaffing, the nature and constraints of their job duties, and/or pressure to meet production
2 demands/goals.

3 48. For example, on information and belief, Class Members had no choice but to take
4 meal periods late in order to complete assigned job duties. On information and belief, Class
5 Members' meal periods were sometimes interrupted, cut short, and/or restricted to DEFENDANTS'
6 premises due to production goals/expectations.

7 49. On information and belief, DEFENDANTS implemented policies and/or practices
8 that failed to relieve Class Members of all duties and DEFENDANTS' control during unpaid meal
9 periods, and Class Members were regularly required, suffered, and/or permitted to take meal periods
10 past the fifth hour of work and/or perform work-related tasks during meal periods and/or were
11 restricted to DEFENDANTS' premises.

12 50. On information and belief, DEFENDANTS required Class Members to complete
13 work before clocking in for their scheduled shifts, which time DEFENDANTS failed to take into
14 account when scheduling meal periods for Class Members. On information and belief, meal periods
15 were late in part due to pre-shift off-the-clock work.

16 51. On information and belief, DEFENDANTS' timekeeping policies and practices
17 resulted in DEFENDANTS' failure to provide the opportunity to take all meal periods to which
18 PLAINTIFF and other Class Members were entitled, despite having actual and/or constructive
19 knowledge that PLAINTIFF and other Class Members did not receive lawful meal periods.

20 52. Moreover, DEFENDANTS' uniform policy and practice failed to provide Class
21 Members who worked shifts of more than ten (10) hours the opportunity to take a second duty-free
22 30-minute meal period.

23 53. On information and belief, DEFENDANTS failed to instruct PLAINTIFF and other
24 Class Members as to the timing and duty-free nature of meal periods. On further information and
25 belief, DEFENDANTS did not have a written meal period policy or any sort of compliant policy in
26 practice.

27 54. Moreover, on information and belief, DEFENDANTS failed to keep accurate records
28 of the true start and end times of PLAINTIFF and Class Members' meal periods. On information

1 and belief, to the extent meal periods were recorded, DEFENDANTS illegally rounded the start
2 and end times of purported meal periods resulting in PLAINTIFF and other Class Members not
3 being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN*
4 *Services, LLC* (2021) 11 Cal.5th 58.

5 55. On information and belief, DEFENDANTS had actual and/or constructive
6 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods were
7 free of DEFENDANTS' control to which PLAINTIFF and other Class Members are entitled by
8 California law.

9 56. DEFENDANTS failed to pay PLAINTIFF and other Class Members an additional
10 hour of wages at the employee's regular rate of pay for each workday a lawful meal period was not
11 provided. DEFENDANTS either failed to pay a meal period premium at all for each workday a
12 lawful meal period was not provided or failed to pay the proper meal period premium by failing to
13 incorporate all non-discretionary remuneration, including bonuses and/or shift differentials, into the
14 regular rate calculation.

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

19 58. PLAINTIFF and other Class Members were not adequately informed, authorized,
20 instructed about, nor permitted an opportunity to take proper rest periods per California law. On
21 information and belief, DEFENDANTS did not have a compliant written rest period policy or any
22 sort of compliant rest period policy in practice.

23 59. For example, on information and belief, Class Members were not always able to take
24 duty-free rest periods of at least ten (10) minutes due to the need to complete assigned job duties,
25 were not able to take a net ten-minute rest period in a suitable rest area, and/or were restricted to
26 DEFENDANTS' premises during purported rest periods.

27 60. On further information and belief, DEFENDANTS did not have a lawful policy,
28 instruction, or practice as to the taking, timing, or duty-free nature of rest periods.

1 61. For example, on information and belief, to the extent rest periods were provided,
2 DEFENDANTS limited PLAINTIFF and other Class Members to rest periods of few than ten (10)
3 duty-free minutes by requiring them to be back at their workstations from a suitable rest area within
4 ten minutes of leaving, in violation of California rest period law.

5 62. On information and belief, Class Members' rest periods were interrupted, cut short,
6 on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of their
7 job duties, and/or pressure to keep working.

8 63. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
9 lasting longer than ten hours.

10 64. On information and belief, DEFENDANTS implemented policies and/or practices
11 that failed to relieve PLAINTIFF and other Class Members of all duties and DEFENDANTS'
12 control during rest periods.

13 65. On information and belief, Class Members were pressured to complete their work
14 duties according to a designated schedule such that rest periods were only taken once tasks were
15 completed and/or as time permitted.

16 66. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
17 which PLAINTIFF and Class Members were not provided a lawful rest period, in violation of
18 California law. DEFENDANTS either failed to pay a rest period premium at all for each workday a
19 proper rest period was not provided or failed to pay the proper rest period premium by failing to
20 incorporate all non-discretionary remuneration, including bonuses and shift differentials, into the
21 regular rate of pay calculation.

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

1 68. As a result of the unlawful policies and practices alleged herein, DEFENDANTS
2 issued wage statements to PLAINTIFF and Class Members that also failed to indicate the earned
3 gross and net wages earned during the pay period, the correct applicable rates of pay for all hours
4 worked, and the total hours worked by PLAINTIFF and Class Members, which failure violates
5 Labor Code § 226(a).

6 69. As described herein, on information and belief, DEFENDANTS also failed to
7 incorporate all forms of non-discretionary compensation earned during the pay period into the
8 overtime pay rate calculation, thus failing to display the proper overtime rate(s) for each hour of
9 overtime worked by PLAINTIFF and other Class Members. On information and belief, wage
10 statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which
11 the Class Member is being paid. For example, DEFENDANTS issued wage statements to Class
12 Members that list a category for “retro” and/or retroactive pay but fail to state accurately the
13 inclusive dates of the pay period for such pay or to list the total hours worked for the pay period to
14 which the retroactive pay corresponds. As a result, the wage statements provided to Class Members
15 were not accurate and do not include all of the statutorily required information.

16 70. On information and belief, wage statements issued by DEFENDANTS failed to list
17 all applicable hourly rates in effect during the pay period and the corresponding number of hours
18 worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9).

19 71. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
20 Members that were not accurate and did not include all of the statutorily required information. As
21 such, DEFENDANTS violated Labor Code § 226.

22 72. **Failure to Produce Employment Records.** On information and belief,
23 DEFENDANTS have a uniform policy and practice of failing to timely produce or make available
24 a current or former employee’s time, pay, and/or personnel records when requested pursuant to
25 Labor Code §§ 226, 1198.5, and 432 and/or the applicable Wage Order. For example, PLAINTIFF,
26 through counsel, sent a written request for time, pay, and personnel records to DEFENDANTS on
27 May 18, 2023, and June 23, 2023. Yet, DEFENDANTS failed to timely produce complete records
28 within the time period prescribed by California labor law. On information and belief,

1 DEFENDANTS failed, and continue to fail, to timely produce complete time, pay, and personnel
2 records when lawfully requested.

3 73. **Failure to Timely Pay All Wages Upon Separation of Employment.** On
4 information and belief, DEFENDANTS failed to timely pay Class Members all wages that were due
5 and owing upon termination or resignation. On information and belief, DEFENDANTS failed
6 timely to provide final wages to Class Members, in violation of Labor Code §§ 201-202.

7 74. Upon separation of employment, Class Members' final paychecks were not timely
8 provided and/or were not timely provided with all owed vacation pay and/or paid time off.
9 Moreover, PLAINTIFF's and Class Members' final paychecks, once provided, did not include all
10 wages owed as they were devoid of, inter alia, all minimum, overtime, and premium wages earned
11 and owned and/or unused, accrued vacation pay, paid sick leave, and/or other paid time off
12 remuneration at the correct rates of pay.

13 75. On further information and belief, DEFENDANTS failed to timely provide all owed
14 wages immediately upon every discharge of employment. On information and belief, Members
15 experienced breaks in employment when DEFENDANTS did not call Class Members in for work
16 for longer than a single pay period due to, for example, lack of work or lack of assignments. Such
17 instances qualify as a discharge of employment, yet DEFENDANTS failed to timely pay all owed
18 wages at the time of discharge, in violation of Labor Code §§ 201-202.

19 76. These violations also subject DEFENDANTS to civil penalties under Labor Code §§
20 203, 210, and/or 256.

21 77. **Unreimbursed Business Expenses.** On information and belief, DEFENDANTS
22 required PLAINTIFF and Class Members to incur business expenses as a direct consequence of the
23 performance of their job duties without reimbursement, in violation of Labor Code § 2802. On
24 information and belief, PLAINTIFF and Class Members were required to provide and maintain
25 work tools that are supposed to be the responsibility of the employer.

26 78. On information and belief, DEFENDANTS thus shifted the costs of doing business
27 onto PLAINTIFF and other Class Members, requiring them to pay for business expenses that
28 include uniforms/work clothing/work shoes, personal protective/safety gear and/or the use of Class

1 Members' personal mobile phone and data usage for work-related purposes.

2 79. For example, on information and belief, Class Members received calls/messages to
3 their personal cell phones/mobile devices from supervisors and/or other Class Members regarding
4 scheduling and/or other work tasks but were not reimbursed by DEFENDANTS for this personal
5 cell phone use.

6 80. On information and belief, DEFENDANTS sometimes required Class Members to
7 use their personal vehicles for work without reimbursing them for expenses necessarily incurred.
8 For example, on information and belief, DEFENDANTS required Class Members to travel from
9 one of DEFENDANTS' facilities/restaurants to another without reimbursing Class Members for the
10 expenses incurred, including mileage.

11 81. DEFENDANTS' failure to provide Class Members with full reimbursement for all
12 reasonable expenses associated with carrying out their duties required that Class Members
13 subsidize and/or carry the burden of business expenses in violation of Labor Code § 2802.

14 82. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
15 applied the unlawful practices described herein uniformly to all Class Members.

16 **FIRST CAUSE OF ACTION**

17 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
18 **(By PLAINTIFF and Class Members Against all DEFENDANTS)**

19 83. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

20 84. It is fundamental that an employer must pay its employees for all time worked.
21 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
22 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
23 permits deductions from wages when the employer is required or empowered to do so by state or
24 federal law or when the deduction is expressly authorized in writing by the employee for specified
25 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223
26 prohibits the pay of less than a statutory or contractual wage scale.

27 85. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
28 Commission ("IWC") Wage Orders, an employer must pay its employees for all hours worked, up
to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.

1 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
2 period is unlawful.

3 86. DEFENDANTS violated California's minimum wage laws by failing accurately to
4 account for all hours worked and thus failing to pay all minimum wages earned and owed, as
5 described above.

6 87. DEFENDANTS had, and continue to have, a policy of failing to pay PLAINTIFF
7 and Class Members for all hours worked.

8 88. On information and belief, DEFENDANTS had actual or constructive knowledge
9 that its policies and practices, including for timekeeping, meal periods, and payroll, as described
10 above, resulted in the underpayment of minimum wages owed to PLAINTIFF and other Class
11 Members.

12 89. Pursuant to Labor Code §§ 1194 and 1194.2, PLAINTIFF and Class Members are
13 entitled to recover all unpaid minimum wages and liquidated damages thereon, plus attorney's fees
14 and costs, in an amount to be proved at trial.

15 **SECOND CAUSE OF ACTION**

16 **Recovery of Unpaid Overtime Wages**
17 **(By PLAINTIFF and Class Members Against all DEFENDANTS)**

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

19 91. Employees in California must be paid overtime, equal to one and one-half times the
20 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
21 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
22 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
23 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
consecutive day of work in a workweek, unless they are exempt.

24 92. PLAINTIFF and Class Members worked overtime hours for which they were not
25 compensated by DEFENDANTS, as described above, by virtue of DEFENDANTS' policies and
26 practices for, inter alia, timekeeping meal periods, and payroll that resulted in the failure to account
27 for all hours worked and thus the failure to pay all overtime wages earned and owed.

28 93. On information and belief, DEFENDANTS failed to pay twice Class Members'

1 regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked
2 beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of
3 California's overtime laws.

4 94. On information and belief, DEFENDANTS further violated California's overtime
5 wage laws by failing to incorporate all non-discretionary compensation, including bonuses and shift
6 differentials, into the regular rate of pay calculation for overtime, resulting in the underpayment of
7 overtime wages owed to PLAINTIFF and other Class Members.

8 95. DEFENDANTS' conduct described above is in violation of California Labor Code
9 sections 510 and 1194 and all applicable Wage Orders.

10 96. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
11 wages, plus attorney's fees and costs, in an amount to be proved.

12 **THIRD CAUSE OF ACTION**

13 **Failure to Provide Meal Periods or Compensation in Lieu Thereof** 14 **(By PLAINTIFF and Class Members Against all DEFENDANTS)**

14 97. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

15 98. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
16 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
17 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
18 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
19 waived, but only under the following circumstances: (1) if an employee's total work period in a day
20 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
21 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
22 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
23 waived by mutual consent of the employer and employee, but only if the first meal period was not
24 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
25 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
26 done so.

27 99. Employers must pay employees an additional hour of wages at the employees'
28 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted

1 meal period, first meal period provided after five (5) hours, second meal period provided after 10
2 hours). Lab. Code § 226.7.

3 100. As explained above, PLAINTIFF and other Class Members were consistently unable
4 to take timely, duty-free, 30-minute first and second meal periods, often being forced to take meal
5 periods late and/or work through part or all of their meal periods due to understaffing, the nature
6 and constraints of their job duties, and/or pressure to keep working.

7 101. On information and belief, DEFENDANTS had, and continue to have, a policy of
8 rounding the start and end times of employees' meal periods and/or automatically deducting thirty
9 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class
10 Members did not receive full and complete meal periods.

11 102. Moreover, on information and belief, Class Members did not receive a timely, duty-
12 free second meal period when working shifts over ten (10) hours in a workday.

13 103. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
14 actual and/or constructive knowledge that its timekeeping policies and practices resulted in the
15 failure to provide compliant meal periods in violation of California's meal period laws.

16 104. DEFENDANTS also failed to pay premiums for unlawful meal periods in violation
17 of California law and/or failed to pay the proper meal period premium by failing to incorporate all
18 non-discretionary remuneration into the regular rate of pay calculation for the owed meal period
19 premium.

20 105. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
21 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
22 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
23 all in an amount to be proved at trial.

24 **FOURTH CAUSE OF ACTION**

25 **Failure to Provide Rest Periods or Compensation in Lieu Thereof** 26 **(By PLAINTIFF and Class Members Against all DEFENDANTS)**

27 106. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

28 107. Labor Code section 226.7 and all applicable Wage Orders require an employer to
authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours

1 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
2 “insofar as practicable.” In *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, the
3 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
4 from 3½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
5 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. *Id.* at 1029.
6 The rest period requirement obligates employers to permit and authorize employees to take off-duty
7 rest periods, meaning employers must relieve employees of all duties and relinquish control over
8 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal. 5th 257.

9 108. If the employer fails to provide any required rest period, the employer must pay the
10 employee one hour of pay at the employee’s regular rate of compensation for each workday the
11 employer did not provide at least one legally required rest period, pursuant to Labor Code section
12 226.7.

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

23 110. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
24 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
25 rest periods were missed, interrupted, cut short, and/or otherwise subject to DEFENDANTS’ control
26 due.

27 111. On information and belief, DEFENDANTS implemented policies and/or practices
28 that failed to relieve PLAINTIFF and other Class Members of all duties and employer control during

1 rest periods. On further information and belief, Class Members were pressured to complete their
2 work duties according to a designated schedule such that rest periods were only taken once tasks
3 were completed.

4 112. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
5 second, or third rest periods as required by California law.

6 113. Moreover, on information and belief, DEFENDANTS failed to pay a rest period
7 premium to PLAINTIFF and other Class Members for each workday in which there was a missed
8 or otherwise unlawful rest period. On further information and belief, when a rest premium was paid,
9 DEFENDANTS failed to include non-discretionary compensation into the regular rate of pay
10 calculation for the owed rest period premium.

11 114. DEFENDANTS are therefore liable to PLAINTIFF and Class Members for one hour
12 of additional pay at the regular rate of compensation for each workday that a required rest period
13 was not provided, pursuant to Labor Code § 226.7 and the applicable Wage Order, plus pre-
14 judgment interest, plus attorneys' fees and costs, all in an amount to be proved at trial.

15 **FIFTH CAUSE OF ACTION**

16 **Violations of Labor Code Section 226**

17 **(By PLAINTIFF and Class Members Against all DEFENDANTS)**

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

19 116. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and Class
20 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
21 wage statement accurately stating the following:

22 (1) gross wages earned, (2) total hours worked by the employee... (3)
23 the number of piece-rate units earned and any applicable piece rate if
24 the employee is paid on a piece-rate basis, (4) all deductions, provided
25 that all deductions made on written orders of the employee may be
26 aggregated and shown as one item, (5) net wages earned, (6) the
27 inclusive dates of the period for which the employee is paid, (7) the
28 name of the employee and ... the last four digits of his or her social
security number or an employee identification number ..., (8) the
name and address of the legal entity that is the employer, and (9) all
applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the
employee.

117. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with

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

8 118. Moreover, due to violations detailed above, including DEFENDANTS' failure to pay
9 regular and overtime wages for all hours worked, failure to provide meal and rest break premiums,
10 and failure to pay all sick leave wages at the proper rates, DEFENDANTS have violated Labor Code
11 § 226 by willfully failing to furnish PLAINTIFF and other Class Members with accurate, itemized
12 wage statements that listed the gross and net wages earned and the correct applicable rates of pay
13 for all hours worked. On information and belief, DEFENDANTS failed to incorporate all forms of
14 non-discretionary compensation earned during the pay period into the regular rate of pay calculation
15 for the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other Class
16 Members.

17 119. As explained above, wage statements issued by DEFENDANTS failed to list the
18 "total hours worked" by PLAINTIFF and Class Members because not all hours were accurately
19 recorded, which results in a violation of Labor Code § 226(a). Failure to list all hours worked on a
20 wage statement gives rise to an inference of injury under Labor Code § 226 (*Maldonado v. Epsilon*
21 *Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

22 120. Separately, and independent from the above allegations, DEFENDANTS issued
23 wage statements to PLAINTIFF and Class Members that violate Labor Code § 226(a)(8), by failing
24 to list the correct name and/or address of the legal entity that is the employer.

25 121. On information and belief, wage statements issued by DEFENDANTS failed to list
26 the inclusive dates of the pay period for which the Class Member is being paid.

27 122. DEFENDANTS' failure to list all hours worked accurately on all wage statements
28 caused confusion to PLAINTIFF and other Class Members over whether they received all wages

1 owed to them.

2 123. As a result, PLAINTIFF and other Class Members have suffered injury as they could
3 not easily determine whether they received all wages owed to them and whether they were paid for
4 all hours worked.

5 124. On information and belief, wage statements issued by DEFENDANTS failed to list
6 all applicable hourly rates in effect during the pay period and the corresponding number of hours
7 worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9).

8 125. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
9 Class Members with accurate, itemized wage statements.

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

19 127. Pursuant to California Labor Code § 226(e), PLAINTIFF and Class Members are
20 entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
21 violation occurred and one hundred dollars per employee per violation for each subsequent pay
22 period, not to exceed an aggregate penalty of four thousand dollars per employee.

23 128. Pursuant to Labor Code § 226(h), PLAINTIFF and Class Members are entitled to
24 bring an action for injunctive relief to ensure DEFENDANTS' compliance with Labor Code §
25 226(a). Injunctive relief is warranted because DEFENDANTS continue to provide currently
26 employed Class Members with inaccurate wage statements in violation of Labor Code § 226(a).
27 Currently employed Class Members have no adequate legal remedy for the continuing injuries that
28 will be suffered as a result of DEFENDANTS' ongoing unlawful conduct. Injunctive relief is the

1 only remedy available for ensuring DEFENDANTS' compliance with Labor Code § 226(a).

2 129. Pursuant to Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class Members are
3 entitled to recover the full amount of penalties due under Section 226(e), reasonable attorneys' fees,
4 and costs of suit.

5 **Failure to Produce Employment Records**

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

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

21 132. *Personnel Records.* In addition to their right to time and pay records, employees, and
22 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
23 Labor Code § 1198.5. This statute applies to both former and current employees. Labor Code § 432
24 further specifies that employers must furnish copies of all employment records bearing the
25 employee's signature.

26 133. Labor Code § 1198.5 also requires that the file be made available for inspection or
27 receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the
28 employer receives a written request." An employer's failure to comply within this timeframe

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

3 134. On information and belief, DEFENDANTS have a uniform policy and practice of
4 failing to produce or make available a current or former employee's personnel records and/or payroll
5 records when requested pursuant to Labor Code §§ 226, 1198.5, and 432 and/or the applicable Wage
6 Order.

7 135. DEFENDANTS' conduct described above is in violation of Labor Code Sections
8 226(b) & (c). Accordingly, PLAINTIFF and Class Members are each entitled to recover a \$750.00
9 penalty from DEFENDANTS, along with costs and reasonable attorneys' fees, pursuant to Labor
10 Code § 226(f).

11 136. DEFENDANTS' conduct is also in violation of Labor Code section 1198.5. Pursuant
12 to Labor Code Sections Labor Code section 1198.5(k), PLAINTIFF and Class Members are entitled
13 to recover an additional \$750.00 penalty from DEFENDANTS, along with injunctive relief, costs
14 and reasonable attorney's fees pursuant to Labor Code § 1198.5(l).

15 **SIXTH CAUSE OF ACTION**

16 **Failure to Timely Pay All Wages Due Upon Separation of Employment**
17 **(By PLAINTIFF and Class Members Against all DEFENDANTS)**

18 137. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

19 138. Labor Code section 201(a) provides, in relevant part, that “[i]f an employer
20 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
21 immediately.”

22 139. California Labor Code section 202(a) provides, in relevant part, that “[i]f an
23 employee not having a written contract for a definite period quits his or her employment, his or her
24 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
25 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
26 to his or her wages at the time of quitting.”

27 140. On information and belief, DEFENDANTS failed, and continue to fail, to timely pay
28 final wages to PLAINTIFF and Class Members upon separation of employment in violation of

1 Labor Code §§ 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
2 Members do not include all wages owed, including all minimum, overtime, and premium wages
3 earned and owed and all unused, accrued vacation pay and/or all paid sick leave and/or paid time
4 off wages at the correct rates of pay.

5 141. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
6 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
7 pay, plus attorney's fees and costs, in an amount to be proved at trial.

8 **SEVENTH CAUSE OF ACTION**

9 **Failure to Reimburse Business Expenses** 10 **(By PLAINTIFF and Class Members Against all DEFENDANTS)**

11 142. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

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

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

26 145. As described above, PLAINTIFF and Class Members were required to pay for
27 business expenses that are legally the responsibility of the employer.

28 146. DEFENDANTS' failure to provide PLAINTIFF and Class Members with full
reimbursement for all reasonable expenses associated with carrying out their duties required that

1 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses, in
2 violation of Labor Code § 2802.

3 147. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
4 Members have suffered injury in that they were not completely reimbursed as mandated by
5 California law.

6 148. Pursuant to Labor Code section 2802, PLAINTIFF and the Class Members are
7 entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
8 attorneys' fees, and costs of suit.

9 **EIGHTH CAUSE OF ACTION**

10 **Unfair Competition**

11 **(By PLAINTIFF and Class Members Against all DEFENDANTS)**

12 149. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

13 150. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
14 under the UCL, Bus. & Prof. Code § 17200 *et seq.* This unfair conduct includes all unlawful conduct
15 alleged herein, including: DEFENDANTS' failure to pay minimum and overtime wages by virtue
16 of its illegal policies and practices; DEFENDANTS' failure to authorize, permit, or provide all
17 required meal and rest periods or pay proper premiums in lieu thereof; DEFENDANTS' failure to
18 furnish complete and accurate itemized wage statements; DEFENDANTS' failure to reimburse
19 business expenses; DEFENDANTS' failure to timely pay all wages owed upon separation of
20 employment; and DEFENDANTS' failure to provide paid sick leave (or paid time off in lieu thereof)
21 at the properly accrued rates.

22 151. Due to DEFENDANTS' unfair and unlawful business practices, DEFENDANTS
23 have gained a competitive advantage over other comparable companies doing business in the State
24 of California that comply with their obligations to authorize or permit rest periods and meal periods
25 or pay proper meal and rest period premiums in lieu thereof, to properly accrue and pay sick time
26 benefits, to provide complete and accurate itemized wage statements, to reimburse employees for
27 all business expenses, to pay all owed minimum and overtime wages, and to pay all wages due upon
28 separation of employment of their employees.

152. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF

1 and Class Members have suffered injury in fact and lost money or property, as described in detail
2 above. Under the UCL, PLAINTIFF and Class Members are entitled to restitution of all wages and
3 other monies rightfully belonging to them that DEFENDANTS failed to pay and wrongfully retained
4 by means of their unlawful and unfair business practices.

5 153. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
6 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
7 engaging in each of the unlawful practices and policies set forth herein.

8 **NINTH CAUSE OF ACTION**
9 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, AGA**
10 **Labor Code §§ 2698, *et seq.***
11 **(On behalf of PLAINTIFF, Aggrieved Employees, and the State of California against all**
12 **DEFENDANTS)**

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

14 **Failure to Keep Accurate Records**

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

19 156. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
20 and complete records as required by law, including the following records: total daily hours worked,
21 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
22 began and ended each work period, time records of meal periods, and accurate itemized wage
23 statements.

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

1 pay period during which the referenced statutes and Wage Order provisions were violated.²

2 **Meal Period Violations**

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

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

10 160. Employers covered by any and all applicable Wage Orders have an obligation to both
11 (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and*
12 (2) to record having done so. If the employer fails to properly record a valid meal period, it is
13 presumed that no meal period was provided. All applicable Wage Orders, section 7(A)(3) (“Meal
14 periods . . . shall also be recorded”); *Brinker*, 53 Cal. 4th at 1052-1053 (citing Wage Order 5, section
15 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a rebuttable
16 presumption arises that the employee was not relieved of duty and no meal period was provided”).

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

24 162. As explained above, PLAINTIFF and other Aggrieved Employees were consistently

25 ² 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 “in 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 unable to take timely, duty-free, 30-minute first and second meal periods, often being forced to take
2 late meal periods, interrupted meal periods, and/or work through part or all of their meal periods
3 due to understaffing, the nature and constraints of their job duties, and/or commentary from
4 supervisors pressuring them to take non-compliant meal periods or skip meal periods completely.

5 163. On information and belief, DEFENDANTS had, and continue to have, a policy of
6 rounding the start and end times of employees' meal periods and/or automatically deducting thirty
7 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
8 Aggrieved Employees did not receive compliant meal periods.

9 164. Moreover, on information and belief, Aggrieved Employees did not receive a timely,
10 uninterrupted second 30-minute meal period when working shifts over ten (10) hours in a workday.

11 165. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
12 actual and/or constructive knowledge that its timekeeping policies and practices, *inter alia*, resulted
13 in the denial of compliant meal periods in violation of California's meal period laws.

14 166. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
15 periods in violation of California law and/or failed to pay the proper meal period premium by failing
16 to incorporate all non-discretionary remuneration, including bonus and shift differentials, into the
17 regular rate calculation.

18 167. These unlawful meal period policies and practices result in violations of Labor Code
19 sections 226.7, 512, and 1198-1199, and all applicable Wage Orders, § 11. The violations subject
20 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
21 Wage Orders, § 20. These practices result in further violations, such as violations of Labor Code §
22 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

23 **Rest Period Violations**

24 168. Labor Code section 226.7 and all applicable Wage Orders require an employer to
25 authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
26 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
27 "insofar as practicable." In *Brinker*, the California Supreme Court held that employees are entitled
28 to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods

1 for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than
2 10 hours up to 14 hours. *Brinker, supra*, 53 Cal. 4th at 1029. The rest period requirement obligates
3 employers to permit and authorize employees to take off-duty rest periods, meaning employers must
4 relieve employees of all duties and relinquish control over how employees spend their time.
5 *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal. 5th 257. If the employer fails to provide any
6 required rest period, the employer must pay the employee one hour of pay at the employee's regular
7 rate of compensation for each workday the employer did not provide at least one legally required
8 rest period, pursuant to Labor Code § 226.7, and applicable Wage Order, §12(B).

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

19 170. PLAINTIFF and Aggrieved Employees did not receive legally compliant, timely 10-
20 minute rest periods for every four (4) hours worked or major fraction thereof. As discussed above,
21 any purported rest periods were late, interrupted, cut short, and/or otherwise subject to
22 DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
23 understaffing, and/or pressure to keep working.

24 171. On information and belief, DEFENDANTS implemented policies and/or practices
25 that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and employer control
26 during rest periods. On further information and belief, Aggrieved Employees were pressured to
27 work through breaks.

28 172. As a result, PLAINTIFF and Aggrieved Employees did not receive all compliant

1 first, second, or third rest periods required by California law.

2 173. Moreover, on information and belief, DEFENDANTS failed to pay a rest period
3 premium to PLAINTIFF and other Aggrieved Employees for each workday in which there was a
4 missed or otherwise unlawful rest period. On further information and belief, when a rest premium
5 was paid, DEFENDANTS failed to include non-discretionary compensation, including bonuses and
6 shift differentials, into the regular rate calculation.

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

10 **Failure to Provide Suitable Resting Facilities**

11 175. Per Section 13 of all applicable Wage Orders, including Wage Order 4, employees
12 shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides:
13 “Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be
14 available to employees during work hours.”

15 176. DEFENDANTS’ locations/facilities are generally similar in layout and design, and
16 there was, and continues to be, space that allows for a resting area that employees may use to cease
17 work and recover. DEFENDANTS could have provided Aggrieved Employees with a resting area
18 within DEFENDANTS’ facilities/locations with reasonable or no modification, but instead denied,
19 and continue to deny, employees suitable areas to rest (e.g. a breakroom). As a result, Aggrieved
20 Employees were forced to adjust to areas not conducive to resting or search for facilities outside of
21 DEFENDANTS’ premises that are not designated or reserved for their rest, such as their personal
22 vehicles.

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

25 178. DEFENDANTS’ failure to provide suitable resting facilities to Aggrieved
26 Employees violated and continue to violate the applicable Wage Order, section 13(B) and the
27 California Labor Code, including section 1198.

28 **Minimum and Overtime Wage Violations**

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

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

14 181. As explained above, DEFENDANTS violated California's minimum and overtime
15 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
16 by virtue of, among other things, DEFENDANTS' timekeeping policies and practices, as described
17 above and which resulted in unpaid minimum and overtime wages.

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

20 183. On information and belief, DEFENDANTS had actual or constructive knowledge
21 that its timekeeping policies and practices and failure to relieve employees of all duties and employer
22 control during unpaid meal periods resulted in the underpayment of minimum and overtime wages
23 owed to PLAINTIFF and other Aggrieved Employees.

24 184. On information and belief, DEFENDANTS failed to pay twice Aggrieved
25 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
26 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
27 violation of California's overtime laws.

28 185. On information and belief, DEFENDANTS further violated California's overtime

1 wage laws by failing to incorporate all non-discretionary compensation, including bonuses and shift
2 differentials, into the regular rate of pay calculation for overtime. Failing to include non-
3 discretionary compensation into the regular rate of pay resulted in the underpayment of overtime
4 wages owed to PLAINTIFF and other Aggrieved Employees.

5 186. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
6 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
7 to civil penalties under Labor Code §§ 218.5, 558, 558.1, 1197.1, and 2699 and all applicable Wage
8 Orders, section 20.

9 **Statutory Wage Violations**

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

21 **Refusal to Make Payment**

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

1 Aggrieved Employee, for each pay period during which the statute provisions were violated. Lab.
2 Code § 225.5 (“*In addition to, and entirely independent and apart from, any other penalty provided*
3 *in this article*, every person who unlawfully withholds wages due any employee in violation of §§
4 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each
5 employee.”) (emphasis added).

6 **Standard Conditions of Labor Violations**

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

15 **Business Expense Violations**

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

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

1 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554.

2 192. Further, “any contract or agreement, express or implied, made by any employee to
3 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
4 any employee or his personal representative of any right or remedy to which he is entitled to under
5 the laws of this State.” Lab. Code § 2804.

6 193. As described above, PLAINTIFF and the Aggrieved Employees were unlawfully
7 required to pay for business expenses that are legally the responsibility of the employer.

8 194. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
9 full reimbursement for all reasonable expenses associated with carrying out their duties required
10 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
11 expenses, in violation of Labor Code § 2802.

12 195. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
13 Employees have suffered injury in that they were not completely reimbursed as mandated by
14 California law.

15 196. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
16 full reimbursement for all reasonable expenses associated with carrying out their duties required
17 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
18 expenses, in violation of Labor Code § 2802.

19 197. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved
20 Employees have suffered injury in that they were not completely reimbursed as mandated by
21 California law.

22 198. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
23 PLAINTIFF and other Aggrieved Employees for such expenses, in violation of California Labor
24 Code § 2802 and the applicable Wage Order, which constitutes a PAGA violation.

25 **Wage Statement Violations**

26 199. California law requires every employer semi-monthly or at the time of each payment
27 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
28 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of

1 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
2 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
3 is paid; (7) the name of the employee and only the last four digits of his or her social security number
4 or an employee identification number other than a social security number; (8) the name and address
5 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
6 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

7 200. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
8 with meal and rest periods that complied with Labor Code § 226.7 and/or record accurately all hours
9 worked, the wage statements DEFENDANTS issued to PLAINTIFF and other Aggrieved
10 Employees failed and continue to fail correctly to set forth all required items, in violation of Labor
11 Code § 226(a)(9).

12 201. Moreover, due to violations detailed above, including DEFENDANTS' failure to pay
13 regular and overtime wages for all hours worked, failure to provide meal and rest break premiums,
14 and failure to pay all sick leave wages at the proper rates, DEFENDANTS have violated Labor Code
15 § 226 by willfully failing to furnish PLAINTIFF and other Aggrieved Employees with accurate,
16 itemized wage statements that listed the gross and net wages earned and the correct applicable rates
17 of pay for all hours worked. On information and belief, DEFENDANTS failed to incorporate all
18 forms of non-discretionary compensation earned during the pay period into the regular rate of pay
19 for purposes of calculating the owed overtime rate and as such, failed to display the proper overtime
20 rate(s) for each hour of overtime worked by PLAINTIFF and other Aggrieved Employees.

21 202. As discussed above, wage statements issued by DEFENDANTS failed to list the
22 "total hours worked" by PLAINTIFF and Aggrieved Employees because not all hours were
23 accurately recorded, which results in a violation of Labor Code § 226(a). Failure to list all hours
24 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
25 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal. App. 5th 1308, 1337).

26 203. On information and belief, wage statements issued by DEFENDANTS failed to list
27 all applicable hourly rates in effect during the pay period and the corresponding number of hours
28 worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9).

1 204. On information and belief, DEFENDANTS issued wage statements to PLAINTIFF
2 and Aggrieved Employees also violate Labor Code § 226(a)(8) by failing to list the correct name
3 and/or address of the legal entity that is the employer.

4 205. On information and belief, wage statements issued by DEFENDANTS failed to list
5 the inclusive dates of the pay period for which the Aggrieved Employee is being paid.

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

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

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

15 209. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and
16 Aggrieved Employees with accurate, itemized wage statements.

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

26 211. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
27 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
28 during which the statute provisions were violated. Lab. Code § 226.3 (establishing that the civil

1 penalty is “per employee per violation”).

2 **Unlawful Deductions**

3 212. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
4 an employee any part of wages theretofore paid by said employer to said employee.” On information
5 and belief DEFENDANTS made unlawful deductions from Aggrieved Employees paychecks during
6 the relevant period. Such a practice is in violation of Labor Code §§ 221-222, which subject
7 DEFENDANTS to civil penalties under Labor Code Section 2699.

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

13 **Gratuities**

14 214. Labor Code Section 351 prohibits employers and their agents from sharing in or
15 keeping any portion of a gratuity left for or given to one or more employees by a patron.
16 Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using
17 gratuities as direct or indirect credits against an employee's wages. In addition, Labor Code Section
18 353 mandates employers to keep accurate records of all gratuities received.

19 215. On information and belief, DEFENDANTS failed to ensure that Aggrieved
20 Employees received in full any gratuities left for them by patrons by collecting and/or taking a
21 portion of the gratuities for themselves, in violation of Labor Code § 351. On further information
22 and belief, DEFENDANTS also failed, and continue to fail, to keep accurate records of all tips
23 received, in violation of Labor Code § 353.

24 216. On information and belief, DEFENDANTS failed to pay gratuities paid to Aggrieved
25 Employees by credit card by the next regular payday following the payment, in violation of Labor
26 Code section 351. On further information and belief, DEFENDANTS impose an additional service
27 charge on their customers/patrons, who are led to believe that the service charge will be paid to
28 Aggrieved Employees. Instead, DEFENDANTS keep most, if not all, of the service charge, thereby

1 depriving Aggrieved Employees of the gratuity left by the patron/customer for them Aggrieved
2 Employees. *See O'Grady v. Merch. Exch. Prods., Inc.* (2019) 41 Cal. App. 5th 771, 790 (a
3 mandatory service charge can constitute a gratuity that is intended to the employees providing the
4 service).

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

8 **Semimonthly Payment Violations**

9 218. Labor Code section 204 requires that all earned wages must be paid to employees
10 twice during each calendar month. DEFENDANTS violated this section by, *inter alia*, failing to pay
11 PLAINTIFF and other Aggrieved Employees an additional hour of pay for meal and rest periods
12 not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked,
13 and by failing to pay proper premium wage rates for all hours worked. These violations subject
14 DEFENDANTS to civil penalties under Labor Code § 210. Each violation results in a separate civil
15 penalty, for each Aggrieved Employee for each pay period during which the statute's provisions
16 were violated.

17 **Reporting Time Pay Violations**

18 219. Section 5 of all applicable Wage Orders, provides as follows:

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

27 220. Aggrieved Employees were not paid reporting time wages in accordance with
28 California law, including the applicable Wage Order(s). For example, on information and belief,

1 PLAINTIFF and/or other Aggrieved Employees sometimes reported to work for a scheduled shift
2 but were sent home and/or were not put to work and were not paid all owed reporting time pay
3 wages in accordance with California law.

4 221. On information and belief, DEFENDANTS have a policy and practice of failing to
5 pay all reporting time wages to Aggrieved Employees, in violation of California law, including the
6 applicable Wage Order(s), Section 5. DEFENDANTS' failure to pay all reporting time wages to
7 PLAINTIFF and Aggrieved Employees violated and continues to violate the applicable Wage Order,
8 and the California Labor Code, including section 1198.

9 **Violation of California Day of Rest Law**

10 222. Under California law, every employee in California is entitled to "one day's rest
11 [from labor] in seven," and, no employer may cause its employees to work more than six days in
12 seven. *See* Lab. Code §§ 551 and 552. Labor Code section 553 provides that a violation of the
13 foregoing sections is a misdemeanor.

14 223. On information and belief, PLAINTIFF and/or other Aggrieved Employees were
15 suffered, permitted, or required to work at least seven (7) consecutive days in a workweek, in
16 violation of California law, including Labor Code § 551.

17 **Seating Violations**

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

21 225. As noted above, Section 14(A-B) of all applicable Wage Orders, provides:

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

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

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

1 which have the same dignity as statutes, are remedial in nature and are to be broadly construed to
2 effectuate the goal of protecting the comfort and welfare of employees. *Brinker*, 53 Cal. 4th at 1027.

3 227. On information and belief, DEFENDANTS failed to provide PLAINTIFF and other
4 Aggrieved Employees with suitable seating, and when such employees were not engaged in duties
5 which required them to stand, no seating was placed in reasonable proximity to their workstations,
6 even when the nature of the work reasonably permitted the use of seats for at least part of the time
7 that Aggrieved Employees were working.

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

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

18 **Sick Leave Violations**

19 230. DEFENDANTS violated California's paid sick leave laws, including Labor Code §§
20 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to PLAINTIFF and
21 other Aggrieved Employees or failed to properly accrue paid sick leave due to DEFENDANTS'
22 failure to account for actual hours worked (as described above), and/or failure to incorporate
23 multiple rates of pay and/or all forms of non-discretionary remuneration into the sick leave pay rate
24 calculation.

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

1 and Aggrieved Employees' intelligent exercise of their paid sick leave.

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

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

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

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

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

17 237. Accordingly, PLAINTIFF seeks all appropriate relief under PAGA, the
18 aforementioned Labor Code provisions, including sections 233 and 234, and seeks injunctive relief,
19 attorneys' fees, declaratory relief, and penalties as permitted by law.

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

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

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

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

7 240. On information and belief, DEFENDANTS had, and continue to have, a uniform
8 policy and practice of failing to allow Aggrieved Employees to use their earned vacation/paid time
9 off during their employment and failing to pay all vested, accrued paid time off, including all owed
10 vacation pay/paid time off paid at the correct final rate, to Aggrieved Employees upon separation of
11 employment, in violation of California law.

12 **Payment of Final Wages**

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

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

26 243. On information and belief, DEFENDANTS failed, and continue to fail, timely to pay
27 final wages to PLAINTIFF and Aggrieved Employees upon separation of employment, in violation
28 of Labor Code §§ 201-202. Moreover, final paychecks provided to PLAINTIFF and Aggrieved

1 Employees did not include all wages owed, including all minimum, overtime, and other premium
2 wages earned and owed and all vested and/or accrued and unused vacation pay, paid sick leave,
3 and/or other paid time off wages at the correct rates of pay.

4 244. Labor Code section 208 provides further that “[e]very employee who is discharged
5 shall be paid at the place of discharge, and every employee who quits shall be paid at the office or
6 agency of the employer in the county where the employee has been performing labor.”

7 245. On information and belief, DEFENDANTS have a policy and practice of failing to
8 provide Aggrieved Employees their final paychecks at the place of discharge or at DEFENDANTS’
9 office/agency in the county where the work was performed.

10 246. As a result, DEFENDANTS violated Labor Code §§ 201, 202, and 203, in addition to
11 section 208, which violations subject DEFENDANTS to civil penalties under Labor Code §§ 203,
12 210, and/or 256.

13 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

14 *Unlawful Agreements/ Unlawful Financial and Criminal Background Checks*

15 247. Labor Code section 432.5 provides that “no employer...shall require any employee
16 or applicant for employment to agree, in writing, to any term or condition which is known by such
17 employer...to be prohibited by law.” DEFENDANTS required, and continue to require,
18 PLAINTIFF and Aggrieved Employees to agree in writing to unlawful conditions of employment,
19 including non-solicitation/non-compete agreements, confidentiality and/or nondisclosure
20 agreements, releases and/or waivers, forum selection clauses and/or choice of law
21 provisions/agreements, and/or criminal and/or financial checks, as a condition of obtaining and/or
22 continuing employment, in violation of Labor Code § 432.5.

23 248. The California Labor Code places certain procedural and substantive limits on an
24 employers’ ability to conduct employee background checks and on how employers can use the
25 information they obtain through those checks. Labor Code section 1024.5 states that employers,
26 except for financial institutions, may order a credit check only if the individual works (or is applying
27 to work) in certain positions. Additionally, the Investigative Consumer Reporting Agencies Act
28 (“ICRAA”), Civ. Code § 1786, *et seq.*, and the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §

1 1681, *et seq.*, mandate several requirements prior to and following an employee background check,
2 including identifying an appropriate reason for the background check, a separate consent form with
3 required disclosures and certain formatting requirements, additional forms such as a summary of
4 rights, a way by which to request a copy of the report, and proper notice of adverse actions taken,
5 among other statutory requirements.

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

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

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

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

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

23 *Unlawful Inquires into Criminal History*

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

28 255. On information and belief, DEFENDANTS, in violation of, *inter alia*, the Fair

1 Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked Aggrieved
2 Employees about convictions before extending an offer of employment and/or otherwise
3 impermissibly inquired into criminal history on its employment application.

4 256. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
5 Code § 432.7. By asking about convictions at the application phase or prior to extending an
6 employment offer, DEFENDANTS violated FEHA and Labor Code § 432.5 by unlawfully requiring
7 Aggrieved Employees to agree in writing to disclose arrests and/or convictions as a condition of
8 employment.

9 Unlawful PAGA Waiver

10 257. DEFENDANTS violated Labor Code section 432.5 by requiring PLAINTIFF and
11 other Aggrieved Employees to agree in writing to other unlawful agreements, including an unlawful
12 waiver of PAGA and/or representative actions as a condition of employment.

13 258. An action pursuant to PAGA “...is a representative action on behalf of the state”
14 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements
15 purporting to waive an employee’s right to a trial of PAGA claims before June 15, 2022, are contrary
16 to California law and unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014)
17 59 Cal. 4th 348, 384.

18 259. On information and belief, DEFENDANTS unlawfully required some Aggrieved
19 Employees to agree in writing to waive their right to a trial of PAGA claims. By requiring Aggrieved
20 Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS violated Labor Code
21 section 432.5.

22 260. Under the provisions of PAGA and the above mentioned Labor Code sections,
23 including Sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7, 245-248.6, 256, 432, 432.5,
24 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3,
25 and 2802 and all applicable Wage Orders, as well as any other law that is enforceable through
26 PAGA, DEFENDANTS are liable for the following penalties:

- 27 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
28 relevant California Labor Code provisions listed herein only if permitted by the

1 PAGA statute, pursuant to Labor Code § 2699(a); and

2 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
3 violations without a civil penalty recoverable under the PAGA, all in the default
4 amounts provided by Labor Code § 2699(f).

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

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

10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF,
12 Aggrieved Employees, and Class Members as follows:

- 13 1. For an order that the action be certified as a class action;
- 14 2. For an order that PLAINTIFF be appointed as class representative;
- 15 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
- 16 4. For compensatory damages according to proof;
- 17 5. For liquidated damages according to proof;
- 18 6. For penalties according to proof;
- 19 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
20 withheld from PLAINTIFF and the Class Members;
- 21 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of the
22 UCL, Bus. & Prof. Code §17200, *et seq.*;
- 23 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
- 24 10. For pre-judgment interest as permitted by law;
- 25 11. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25%
26 payable to Aggrieved Employees);
- 27 12. For an order temporarily, preliminarily and permanently enjoining and restraining
28 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

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- 13. For attorney's fees and costs reasonably incurred; and
- 14. For such other and further relief that the Court deems just and proper.

Dated: October 18, 2023

CROSNER LEGAL, PC

By: 

Jamie Serb
Karen L. Wallace
Zachary M. Crosner
Attorneys for Plaintiff
LUZ DE ARIAS

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DEMAND FOR JURY TRIAL

PLAINTIFF demands a trial by jury on all claims so triable.

Dated: October 18, 2023

CROSNER LEGAL, PC

By: _____

Jamie Serb
Karen L. Wallace
Zachary M. Crosner
Attorneys for Plaintiff
LUZ DE ARIAS

1 PROOF OF SERVICE

2 *Luz De Arias v. Tulaphorn, INC.*

3 *Los Angeles County Superior Court Case No. 23STCV15445*

4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of Los Angeles, State of California. My business address is 9440 Santa
6 Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

7 On October 18, 2023, I served true copies of the following document(s) described as

8 **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

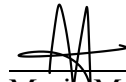
9 on the interested parties in this action as follows:

10 SEE ATTACHED SERVICE LIST

11 ☒ BY ELECTRONIC TRANSMISSION. Pursuant to the Court's Order re Electronic
12 Service, I caused the documents described above to be E-Served through Case Anywhere by
13 electronically mailing a true and correct copy through Case Anywhere to the addressee(s) listed.

14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct and that I am employed in the office of a member of the bar of this
16 Court at whose direction the service was made.

17 Executed on October 18, 2023, at Los Angeles, California.

18
19 
20 Maria Monterrey

SERVICE LIST

Luz De Arias v. Tulaphorn, INC.

Los Angeles County Superior Court Case No. 23STCV15445

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