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

Assigned for All Purposes
Judge Melissa R. McCormick
Dept. CX104

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

12 VICTOR LOPEZ, on behalf of the State of
13 California, and others similarly situated and
aggrieved,

14 Plaintiff,

15
16 v.

17 ORORA PACKAGING SOLUTIONS, a
18 California Corporation; and DOES 1-100,
inclusive,

19 Defendants.
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Case No.: 30-2023-01351285-CU-OE-CXC

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

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

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title
26 of assistant operator and/or a similar title(s) and/or position(s) from in or around September 2015
27 through on or around February 20, 2023. PLAINTIFF worked for DEFENDANTS at
28 DEFENDANTS’ Alhambra, California location(s). PLAINTIFF regularly worked at least ten (10)

1 to twelve (12) hours per day.

2 6. Defendant ORORA PACKAGING SOLUTIONS is a California Corporation that, at
3 all relevant times, was authorized to do business within the State of California and is doing business
4 in the State of California.

5 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
6 packaging centers, solution centers, distribution centers, offices, warehouses, facilities and/or other
7 locations in California, including but not limited to, the packaging centers, solution centers,
8 distribution centers, offices, warehouses, facilities and/or other locations in Alhambra, California.
9 DEFENDANTS, through its various s/other locations serves the packaging and/or distribution
10 industry.¹

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

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

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¹ See <https://ororapackagingsolutions.com/locations/>. Last visited on September 26, 2023

1 **JOINT LIABILITY**

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

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

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

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

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

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

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

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

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

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

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

20 **PAGA ALLEGATIONS**

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

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

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

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

13 21. PLAINTIFF, on July 19, 2023, through counsel, gave written notice by online filing
14 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
15 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
16 in this Complaint (“PAGA Notice”).

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

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

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

28

1 **FACTUAL ALLEGATIONS**

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

6 26. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title
7 of assistant operator and/or a similar title(s) and/or position(s) from in or around September 2015
8 through on or around February 20, 2023.

9 27. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Alhambra, California
10 location(s).

11 28. PLAINTIFF regularly worked at least ten (10) to twelve (12) hours per day.

12 29. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
13 DEFENDANTS as hours worked. PLAINTIFF was also compensated with bonuses/incentive pay
14 (e.g., non-discretionary production-based bonuses) and/or shift differential pay and/or other non-
15 discretionary compensation.

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

18 31. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
19 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
20 minimum wages owed to PLAINTIFF and other Aggrieved Employees as well as overtime wages
21 owed to non-union member Aggrieved Employees. DEFENDANTS failed to compensate
22 PLAINTIFF and Aggrieved Employees for all hours worked by virtue of, DEFENDANTS'
23 automatic deduction and time rounding policies, and failure to relieve employees of all
24 duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or
25 improper meal periods, as explained below.

26 32. Based on information and belief, DEFENDANTS implemented a policy and/or
27 practice of rounding meal period start and end times and/or automatically deducting at least thirty
28 minutes per shift for meal periods, despite having actual and/or constructive knowledge that

1 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
2 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
3 PLAINTIFF and Aggrieved Employees of all wages owed.

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

8 34. For example, based on information and belief, DEFENDANTS required Aggrieved
9 Employees to be at their assigned workstations at the start of a scheduled shift, thereby forcing
10 Aggrieved Employees to gather work-related equipment and/or safety gear, make any necessary
11 adjustments to tools/equipment and/or perform maintenance/cleaning tasks, don work
12 clothing/uniforms and/or protective equipment, and/or complete other work tasks prior to their
13 scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock
14 work.

15 35. Based on information and belief, at times, Aggrieved Employees were required to
16 stand in line behind other employees to access DEFENDANTS' time-keeping system and/or were
17 required to spend time reinitiating DEFENDANTS' time-keeping system before they could clock
18 in for the start of their shifts and/or after completing a purported meal period.

19 36. Based on information and belief, Aggrieved Employees were required to complete
20 other off-the-clock work tasks after clocking out for the end of their shifts and/or during
21 uncompensated meal periods, resulting in off-the-clock work and the underpayment of wages owed
22 to Aggrieved Employees.

23 37. For example, based on information and belief, DEFENDANTS required Aggrieved
24 Employees to clock out for the end of their shifts but to continue working due to the need to
25 return/maintain tools, continue operating machinery, clean and/or organize their work stations/areas,
26 provide shift status updates and/or debriefings and/or participate in work meetings, respond to work-
27 related communications and/or perform other work tasks off-the-clock, resulting in the
28 underpayment of wages owed to Aggrieved Employees.

1 38. For example, based on information and belief, PLAINTIFF and other Aggrieved
2 Employees were required to clock out for the end of their shifts but to continue working due to
3 including but not limited to, lack of coverage/lack of relief workers/relief workers showing up late
4 for the start of their shifts and/or the need to continue operating machinery and/or complete other
5 work tasks.

6 39. Based on information and belief, DEFENDANTS did not compensate Aggrieved
7 Employees for all time spent donning and doffing personal protective equipment, safety equipment
8 and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses, hats/bump caps/safety helmets
9 and/or face masks) during meal periods, before the start of a scheduled shift, and after completing a
10 scheduled shift, resulting in DEFENDANTS' failure to pay Aggrieved Employees for all work time
11 and the underpayment of wages owed to Aggrieved Employees.

12 40. Based on information and belief, at times, DEFENDANTS' electronic employee
13 time-keeping system/app malfunctioned such that Aggrieved Employees were required to either
14 reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable
15 to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-
16 the-clock work and the underpayment of wages owed to Aggrieved Employees. Based on
17 information and belief, Aggrieved Employees experienced the same issues when clocking out for
18 shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not
19 recorded and not compensated and resulted in unpaid minimum wages owed to Aggrieved
20 Employees.

21 41. Based on information and belief, Aggrieved Employees were required to undergo
22 security screenings and/or other mandated screenings before and/or after a scheduled shift and/or
23 before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.

24 42. Based on information and belief, DEFENDANTS required Aggrieved Employees to
25 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
26 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

27 43. Based on information and belief, Aggrieved Employees were also pressured to
28 complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals

1 and expectations.

2 44. For example, based on information and belief, Aggrieved Employees were required
3 to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-
4 related phone calls and/or messages they received to their phones and/or mobile devices and were
5 required to respond to, including but not limited to, communications from supervisors regarding
6 scheduling and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved
7 Employees.

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

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

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

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

28 49. Based on information and belief, DEFENDANTS failed and continue to fail to pay

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

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

9 51. For example, based on information and belief, non-union member Aggrieved
10 Employees were compensated with bonuses/incentive pay non-discretionary (e.g., production-based
11 bonuses) and/or shift differential pay and/or other non-discretionary compensation, however,
12 DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate(s) of
13 pay used to calculate the owed overtime rate(s) resulting in the miscalculation and underpayment of
14 overtime wages owed to non-union member Aggrieved Employees.

15 52. Additionally, DEFENDANTS also violated California's overtime laws as to those
16 non-union member Aggrieved Employees that were subject to an Alternative Workweek Schedule
17 (AWS).

18 53. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
19 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
20 and/or implemented in accordance with the requirements of California law and/or DEFENDANTS
21 failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws,
22 including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor
23 Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an
24 AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

25 54. (C) Election Procedures Election procedures for the adoption and repeal of
26 alternative workweek schedules require the following: (1) Each proposal for an alternative
27 workweek schedule shall be in the form of a written agreement proposed by the employer. The
28 proposed agreement must designate a regularly scheduled alternative workweek in which the

1 specified number of workdays and work hours are regularly recurring. The actual days worked
2 within that alternative workweek schedule need not be specified. The employer may propose a single
3 work schedule that would become the standard schedule for workers in the work unit, or a menu of
4 work schedule options, from which each employee in the unit would be entitled to choose. If the
5 employer proposes a menu of work schedule options, the employee may, with the approval of the
6 employer, move from one menu option to another. (2) In order to be valid, the proposed alternative
7 workweek schedule must be adopted in a secret ballot election, before the performance of work, by
8 at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held
9 during regular working hours at the employees' work site. For purposes of this subsection, "affected
10 employees in the work unit" may include all employees in a readily identifiable work unit, such as
11 a division, a department, a job classification, a shift, a separate physical location, or a recognized
12 subdivision of any such work unit. A work unit may consist of an individual employee as long as
13 the criteria for an identifiable work unit in this subsection is met. (3) Prior to the secret ballot vote,
14 any employer who proposed to institute an alternative workweek schedule shall have made a
15 disclosure in writing to the affected employees, including the effects of the proposed arrangement
16 on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly
17 noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the
18 alternative workweek schedule. An employer shall provide that disclosure in a non- English
19 language, as well as in English, if at least five (5) percent of the affected employees primarily speak
20 that non-English language. The employer shall mail the written disclosure to employees who do not
21 attend the meeting. Failure to comply with this paragraph shall make the election null and void. (4)
22 Any election to establish or repeal an alternative workweek schedule shall be held at the work site
23 of the affected employees. The employer shall bear the costs of conducting any election held
24 pursuant to this section. Upon a complaint by an affected employee, and after an investigation by
25 the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral
26 third party to conduct the election. (5) Any type of alternative workweek schedule that is authorized
27 by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3)
28 of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of

1 the affected employees shall be required to reverse the alternative workweek schedule. The election
2 to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is
3 submitted to the employer, except that the election shall be held not less than 12 months after the
4 date that the same group of employees voted in an election held to adopt or repeal an alternative
5 workweek schedule. The election shall take place during regular working hours at the employees'
6 work site. If the alternative workweek schedule is revoked, the employer shall comply within 60
7 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may
8 grant an extension of time for compliance. (6) Only secret ballots may be cast by affected employees
9 in the work unit at any election held pursuant to this section. The results of any election conducted
10 pursuant to this section shall be reported by the employer to the Office of Policy, Research and
11 Legislation within 30 days after the results are final, and the report of election results shall be a
12 public document. The report shall include the final tally of the vote, the size of the unit, and the
13 nature of the business of the employer. (7) Employees affected by a change in the work hours
14 resulting from the adoption of an alternative workweek schedule may not be required to work those
15 new work hours for at least 30 days after the announcement of the final results of the election. (8)
16 Employers shall not intimidate or coerce employees to vote either in support of or in opposition to
17 a proposed alternative workweek.

18 55. No employees shall be discharged or discriminated against for expressing opinions
19 concerning the alternative workweek election or for opposing or supporting its adoption or repeal.
20 However, nothing in this section shall prohibit an employer from expressing his/her position
21 concerning that alternative workweek to the affected employees. A violation of this paragraph shall
22 be subject to Labor Code § 98 et seq.

23 56. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to
24 comply with the above procedures, and thus, failed to properly institute an alternative workweek for
25 the purpose of obtaining a lawful exemption from overtime premiums for its mandated alternative
26 workweek schedule. Based on information and belief, DEFENDANTS also failed to report the
27 results to the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the
28 purported election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage

1 Orders. This conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the
2 Applicable Wage Orders. These violations subject employer to civil penalties under Labor Code §§
3 558 and 2699, and All Applicable Wage Orders. Each violation of each Labor Code section and
4 Wage Order provision results in a separate civil penalty, for each non-union member Aggrieved
5 Employee, for each pay period during which the referenced statutes and Wage Order provisions
6 were violated.

7 57. Moreover, to the extent there was an AWS that was properly adopted,
8 DEFENDANTS violated California's overtime laws as to non-union member Aggrieved Employees
9 that were subject to an Alternative Workweek Schedule (AWS) but were required to work shifts
10 shorter than the agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an
11 [AWS] employee to work fewer hours than those that are regularly scheduled by the agreement, the
12 employer shall pay the employee overtime compensation at a rate of one and one-half (1 ½) times
13 the employee's regular rate of pay for all hours worked in excess of eight (8) hours... for the day
14 the employee is required to work the reduced hours." See Section 3 of all applicable Wage Orders.
15 Based on information and belief, at times during non-union member Aggrieved Employees'
16 respective employments by DEFENDANTS, non-union member Aggrieved Employees worked
17 subject to an alternative work week schedule. Based on information and belief, at times, non-union
18 member Aggrieved Employees that were subject to an AWS, were sent home early and/or worked
19 less hours than those that were scheduled under the AWS. On such shortened shifts, Aggrieved
20 Employees were entitled to overtime pay at 1.5 times the regular rate of pay after the first eight
21 hours of work. Instead, DEFENDANTS paid non-union member Aggrieved Employees their base
22 rate for all hours worked on the shortened shift(s) in violation of the alternative workweek schedule,
23 and in violation of California Labor Code section 510, 511, the applicable Wage Order, and Labor
24 Code section 1198. As such, non-union member Aggrieved Employees that were subject to an AWS
25 were also deprived of all owed overtime wages when required to work shortened shifts.

26 58. **Meal Period Violations.** Non-union member Aggrieved Employees consistently
27 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
28 However, non-union member Aggrieved Employees would not receive legally compliant thirty (30)

1 minute first and second meal periods. Based on information and belief, non-union member
2 Aggrieved Employees were consistently unable to take timely, off duty, thirty-minute, uninterrupted
3 meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work
4 through part or all their meal periods due to understaffing, the nature and constraints of their job
5 duties and/or commentary from supervisors pressuring them to take non-compliant meal periods or
6 skip meal periods completely.

7 59. For example, based on information and belief, non-union member Aggrieved
8 Employees were forced to take late meal periods in order to complete assigned job duties. Based on
9 information and belief, non-union member Aggrieved Employees were at times interrupted during
10 purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS'
11 premises due to the need to continue assigned job duties.

12 60. For example, at times, non-union member non-union member Aggrieved Employees
13 were required to work through part or all of their meal period and/or take their meal period late (i.e.
14 after the fifth hour of work) due to the need to complete assigned job duties.

15 61. Based on information and belief, other non-union member Aggrieved Employees
16 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
17 their meal periods interrupted, cut short, and/or otherwise on duty due to commentary from
18 supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet
19 DEFENDANTS' goals and expectations.

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

23 63. Based on information and belief, DEFENDANTS required non-union member
24 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
25 DEFENDANTS failed to take into account when scheduling meal periods for non-union member
26 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
27 unaccounted pre-shift off-the-clock work.

28 64. Based on information and belief, despite DEFENDANTS' failure to provide lawful

1 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
2 times of non-union member Aggrieved Employees' meal periods and/or automatically deducting at
3 least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal periods despite
4 having actual and/or constructive knowledge that non-union member Aggrieved Employees did not
5 receive lawful meal periods.

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

8 66. Based on information and belief, DEFENDANTS failed to instruct non-union
9 member Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on
10 further information and belief, DEFENDANTS did not have a compliant written meal period policy,
11 nor did DEFENDANTS have any sort of compliant policy in practice.

12 67. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
13 records of the true start and end times of non-union member Aggrieved Employees meal periods.
14 Based on information and belief, to the extent meal periods were recorded, DEFENDANTS illegally
15 rounded the start and end times of purported meal periods resulting in non-union member Aggrieved
16 Employees not being paid for all time worked as well as late and/or shortened meal periods. *See*
17 *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

18 68. Based on information and belief, DEFENDANTS had actual and/or constructive
19 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods
20 that were free of DEFENDANTS' control owed to non-union member Aggrieved Employees, in
21 violation of California's meal period laws.

22 69. DEFENDANTS failed to pay non-union member Aggrieved Employees, an
23 additional hour of wages at their respective regular rates of compensation for each workday a lawful
24 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
25 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
26 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
27 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
28 compensation for purposes of calculating the owed meal period premium.

1 70. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
2 non-union member Aggrieved Employees with legally compliant rest periods at a rate of every four
3 (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of
4 the work period, as required by law.

5 71. Non-union member Aggrieved Employees were not adequately informed,
6 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
7 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
8 the taking or timing of duty-free rest periods.

9 72. Based on information and belief, DEFENDANTS did not have a have a compliant
10 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
11 practice.

12 73. For example, based on information and belief, non-union member Aggrieved
13 Employees were at times unable to take compliant rest periods due to their need to complete assigned
14 job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had
15 purported rest periods restricted to DEFENDANTS' premises.

16 74. For example, at times, non-union member Aggrieved Employees were required to
17 work through part or all of their owed rest periods due to the need to complete assigned job duties.

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

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

24 77. Based on information and belief, DEFENDANTS implemented policies and/or
25 practices that failed to relieve non-union member Aggrieved Employees of all duties and
26 DEFENDANTS' control during rest periods.

27 78. Based on information and belief, non-union member Aggrieved Employees were
28 pressured to complete their work duties according to a designated schedule such that rest periods

1 were only taken once tasks were completed, and/or as time permitted.

2 79. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
3 which non-union member Aggrieved Employees experienced a missed/unlawful rest period in
4 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
5 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
6 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
7 shift differential pay, and/or other non-discretionary compensation into the regular rate of
8 compensation for purposes of calculating the owed rest period premium.

9 80. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable
10 IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the
11 Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the
12 toilet rooms and shall be available to employees during work hours."

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

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

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

27 84. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed
28 to provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that

1 complied with Labor Code section 226. As DEFENDANTS failed to provide non-union member
2 Aggrieved Employees with meal and rest periods that complied with Labor section 226.7, the wage
3 statements DEFENDANTS issued to non-union member Aggrieved Employees failed and continue
4 to fail to correctly set forth the gross wages earned, the total hours worked, the net wages earned,
5 and all applicable hourly rates in effect during the pay period and the corresponding number of hours
6 worked at each hourly rate by the employee.

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

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

19 87. For example, DEFENDANTS issued wage statements to PLAINTIFF identifying
20 categories for holiday pay and/or bereavement pay, paid time off and/or other forms of pay, without
21 listing a corresponding rate of pay for each category. As such, the wage statements issued by
22 DEFENDANTS fail to list all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee, in violation of
24 including but not limited to, Labor Code section 226(a)(9).

25 88. Based on information and belief, DEFENDANTS issued wage statements to non-
26 union member Aggrieved Employees that do not provide an accurate overtime rate because instead
27 of multiplying the regular rate of pay by one and one-half, the wage statements provide at least two
28 (2) separate overtime rate categories with each provide corresponding rates that are either the same

1 as the base rate and/or list no separate rate for the overtime requiring non-union member Aggrieved
2 Employees to perform extensive calculations to determine what their pay rate was for each
3 corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011).

4 89. Also, as described herein, based on information and belief, DEFENDANTS failed to
5 incorporate all forms of non-discretionary compensation earned during the pay period into the
6 regular rate of pay for purposes of calculating the owed overtime rate, and as such, failed to display
7 the proper overtime rate(s) for each hour of overtime worked by non-union member Aggrieved
8 Employees.

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

11 91. For example, based on information and belief, at times, DEFENDANTS issued wage
12 statements to Aggrieved Employees containing payment for hours worked during previous pay
13 periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate
14 pay period for that retroactive pay, further failing to list the total hours worked for the pay period,
15 including but not limited to, the total hours worked for the pay period the retroactive pay corresponds
16 with. For example, based on information and belief, at times, DEFENDANTS issued wage
17 statement(s) to Aggrieved Employees, that list a category for "Retro" and/or "retroactive pay"
18 without including the inclusive dates of the accurate pay period for that retroactive pay, further
19 failing to list the total hours worked for the pay period, including but not limited to, the total hours
20 worked for the pay period the retroactive pay corresponds with, in violation of, including but not
21 limited to, Labor Code section 226(a)(2) and/or Labor Code section 226(a)(6).

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

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

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

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

7 96. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
8 provides as follows:

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

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

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

27 100. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
28 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer

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

7 **101. Failure to Produce Employment Records.** Based on information and belief,
8 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
9 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code
10 sections 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and belief,
11 DEFENDANTS failed and continues to fail to timely produce complete payroll and personnel
12 records when requested by Aggrieved Employees. Based on information and belief,
13 DEFENDANTS failed and continue to fail to timely produce complete time, pay, and personnel
14 records when requested by other Aggrieved Employees.

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

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

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

7 105. Based on information and belief, DEFENDANTS shifted the costs of doing business
8 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
9 to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of Aggrieved
10 Employees' personal cell phones/mobile devices, internet and/or data usage for work-related
11 purposes, including but not limited to, to receive and respond to work-related messages and/or phone
12 calls.

13 106. For example, based on information and belief, Aggrieved Employees were required
14 to receive and respond to work-related calls and/or messages from supervisors and/or other
15 Aggrieved Employees regarding scheduling and/or other work tasks but were not reimbursed by
16 DEFENDANTS at all and/or in full for these business expenses.

17 107. Based on information and belief, Aggrieved Employees were not reimbursed for the
18 cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform
19 their assigned job duties and/or for the costs of purchasing and/or maintaining work
20 uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

21 108. Based on information and belief, at times, Aggrieved Employees were not
22 reimbursed for the business use of their personal vehicles, including mileage, wear and tear and/or
23 cost of fuel when they were required to drive around and/or between job sites, and/or otherwise use
24 their personal vehicles in carrying out the duties assigned by DEFENDANTS. As such,
25 DEFENDANTS failed to compensate Aggrieved Employees at the legally mandated Internal
26 Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

27 109. As explained above, based on information and belief, Aggrieved Employees were
28 not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost

1 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
2 protective/safety gear.

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

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

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

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

22 114. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
23 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
24 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the
25 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
26 accrued sick leave hours on the correct number of hours worked (as a result of the
27 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
28 times/other required off-the-clock work including but not limited to unpaid meal periods) and by

1 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
2 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
3 compensation into the sick leave pay rate calculation.

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

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

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

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

26 119. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
27 that all employers with 26 or more employees are required to provide up to 80 hours for covered
28 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care

1 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
2 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
3 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
4 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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

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

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

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

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

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

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

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

7 **126. Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every
8 employee who is discharged shall be paid at the place of discharge, and every employee who quits
9 shall be paid at the office or agency of the employer in the county where the employee has been
10 performing labor. All payments shall be made in the manner provided by law.

11 **127.** Based on information and belief, DEFENDANTS have a policy and practice of
12 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
13 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
14 office or agency of DEFENDANTS in the county where the work was performed, in violation of
15 Labor Code Section 208.

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

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

28 **130.** Based on further information and belief, DEFENDANTS failed to timely provide all

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

8 **131. Unlawful Agreements-Unlawful Criminal History Inquiries.**

9 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

1 the application phase.

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

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

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

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

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

25 Unlawful Inquires into Criminal History

26 140. Labor Code section 432.7 prohibits an employer from asking applicants about past
27 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
28 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in

1 convictions on its employment application, in violation of California law.

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

7 Unlawful PAGA Waiver

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

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

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

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

27 146. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
28 engaged in these same herein described unlawful practices, which led to violations of the California

1 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
2 unlawful practices to all of its employees that it applied to PLAINTIFF.

3 **FIRST CAUSE OF ACTION**
4 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
5 **2698, *ET SEQ.***
6 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
7 **Defendants)**

8 147. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

9 **Failure to Keep Accurate Records**

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

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

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

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

26 151. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage

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

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

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

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

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

1 **Meal Period Violations**

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

7 156. 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.*

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

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

25 159. As explained above, non-union member Aggrieved Employees were consistently
26 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
27 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
28 their meal periods due to understaffing, the nature and constraints of their job duties, and/or

1 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
2 periods completely.

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

7 161. Moreover, based on information and belief, non-union member Aggrieved
8 Employees did not receive a timely, uninterrupted second meal period when working shifts over ten
9 (10) hours in a workday.

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

14 163. 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 for failure
16 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
17 differential pay and/or other non-discretionary compensation into the regular rate or compensation
18 for purposes of calculating the owed meal period premium.

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

24 **Rest Period Violations**

25 165. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
26 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
27 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
28 "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),

1 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
2 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
3 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
4 1029). The rest period requirement obligates employers to permit and authorize employees to take
5 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
6 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
7 257. If the employer fails to provide any required rest period, the employer must pay the employee
8 one hour of pay at the employee’s regular rate of compensation for each workday the employer did
9 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
10 applicable IWC Wage Order, §12(B).

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

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

27 168. Based on information and belief, DEFENDANTS implemented policies and/or
28 practices that failed to relieve non-union member Aggrieved Employees of all duties and employer

1 control during rest periods. Based on further information and belief, non-union member Aggrieved
2 Employees were pressured to complete their work duties according to a designated schedule such
3 that rest periods were only taken once tasks were completed, and/or as time permitted.

4 169. As a result, non-union member Aggrieved Employees did not receive legally
5 compliant first, second, or third rest periods as required by California law.

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

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

15 **Failure to Provide Suitable Resting Facilities**

16 172. Per section 13 of all applicable IWC Wage Orders, employees shall be provided with
17 suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities
18 shall be provided in an area separate from the toilet rooms and shall be available to employees during
19 work hours.”

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

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

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

6 **Minimum and Overtime Wage Violations**

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

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

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

28 179. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and

1 Aggrieved Employees for all hours worked.

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

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

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

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

22 **Statutory Wage Violations**

23 184. California Labor Code section 223 makes it unlawful for an employer to secretly pay
24 wages lower than required by statute while purporting to pay legal wages. As described above,
25 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
26 earned minimum compensation for all hours worked as well as overtime compensation for all hours
27 worked owed to non-union member Aggrieved Employees which resulted in the payment of less
28 than statutorily required wages. DEFENDANTS acted with the intent to deprive them of statutory

1 wages, including, but not limited to, minimum and overtime wages, to which they were entitled to
2 under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved Employees
3 lower wages than those they were entitled to while purporting that PLAINTIFF and other Aggrieved
4 Employees were properly paid. As a result, PLAINTIFF and other Aggrieved Employees are entitled
5 to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-
6 (g).

7 **Refusal to Make Payment**

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

17 **Standard Conditions of Labor Violations**

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

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

1 **Business Expense Violations**

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

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

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

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

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

26 192. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
27 Employees have suffered injury in that they were not completely reimbursed as mandated by
28 California law.

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

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

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

12 **Wage Statement Violations**

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

22 197. As DEFENDANTS failed to provide non-union member Aggrieved Employees with
23 meal and rest periods that complied with Labor Code section 226.7, the wage statements
24 DEFENDANTS issued to non-union member Aggrieved Employees failed and continue to fail to
25 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
26 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
27 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
28 during the pay period and the corresponding number of hours worked at each hourly rate by the

1 employee, in violation of Labor Code section 226(a)(9).

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

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

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

23 201. For example, DEFENDANTS issued wage statements to PLAINTIFF identifying
24 categories for holiday pay and/or bereavement pay, paid time off and/or other forms of pay, without
25 listing a corresponding rate of pay for each category. As such, the wage statements issued by
26 DEFENDANTS fail to list all applicable hourly rates in effect during the pay period and the
27 corresponding number of hours worked at each hourly rate by the employee, in violation of
28 including but not limited to, Labor Code section 226(a)(9).

1 202. Based on information and belief, DEFENDANTS issued wage statements to non-
2 union member Aggrieved Employees that do not provide an accurate overtime rate because instead
3 of multiplying the regular rate of pay by one and one-half, the wage statements provide at least two
4 (2) separate overtime rate categories with each provide corresponding rates that are either the same
5 as the base rate and/or list no separate rate for the overtime requiring non-union member Aggrieved
6 Employees to perform extensive calculations to determine what their pay rate was for each
7 corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011).

8 203. Also, as described herein, based on information and belief, DEFENDANTS failed to
9 incorporate all forms of non-discretionary compensation earned during the pay period into the
10 regular rate of pay for purposes of calculating the owed overtime rate, and as such, failed to display
11 the proper overtime rate(s) for each hour of overtime worked by non-union member Aggrieved
12 Employees.

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

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

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

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

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

28 209. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and

1 Aggrieved Employees with accurate, itemized wage statements.

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

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

14 **Unlawful Deductions**

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

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

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

1 **Reporting Time Pay Violations**

2 214. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

22 **Violation of California Day of Rest Law**

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

27 219. Based on information and belief, DEFENDANTS have and continue to have a
28 uniform policy and practice of requiring Aggrieved Employees to work at least seven days

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

5 **Seating Violations**

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

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

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

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

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

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

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

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

8 **Sick Leave Violations**

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

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

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

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

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

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

7 232. On information and belief, PLAINTIFF alleges that all of these practices were
8 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

27 236. Based on information and belief, DEFENDANTS had and continue to have a
28 uniform policy and practice of failing to allow Aggrieved Employees to use their earned

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

6 **Violation of Labor Code Section 208**

7 237. Labor Code Section 208 provides: Every employee who is discharged shall be paid
8 at the place of discharge, and every employee who quits shall be paid at the office or agency of the
9 employer in the county where the employee has been performing labor. All payments shall be made
10 in the manner provided by law.

11 238. Based on information and belief, DEFENDANTS have a policy and practice of
12 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
13 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
14 office or agency of DEFENDANTS in the county where the work was performed, in violation of
15 Labor Code Section 208.

16 **Untimely Payment of Final Wages**

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

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

1 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

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

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

18 243. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
19 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
20 256.

21 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

22 244. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
23 require any employee or applicant for employment to agree, in writing, to any term or condition
24 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
25 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
26 conditions of employment including but not limited to unlawful non-solicitation/non-compete
27 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
28 waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or

1 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment
2 in violation of Labor Code section 432.5.

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

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

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

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

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

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

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

4 Unlawful Inquires into Criminal History

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

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

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

19 Unlawful PAGA Waiver

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

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

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

6 257. Upon information and belief, DEFENDANTS required Aggrieved Employees to
7 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
8 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS
9 required written agreement to an unlawful provision as a condition of employment which is a
10 violation of labor code section 432.5.

11 258. Under the provisions of PAGA and the above-mentioned Labor Code sections,
12 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
13 226.7, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1,
14 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
15 interpretations of these laws by California Courts and administrative bodies, as well as any other
16 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: September 27, 2023

CROSNER LEGAL, PC

By: 

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