

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

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

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN BERNARDINO**

12 THERESA MOORE, on behalf of the State of
13 California, and others similarly situated and
aggrieved,

14 Plaintiff,

15 v.
16

17 QVC, INC., a Delaware Corporation; and
18 DOES 1-100, inclusive,

19 Defendants.

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

11/3/2023 3:36 PM

By: Michelle Gomez-Casillas, DEPUTY

Case No.: CIVSB2328448

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

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

21 **THE PARTIES**

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

24 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
25 DEFENDANTS as a non-exempt employee with a job title of fulfillment member, warehouse
26 worker or a similar title from in or around October 2021 through in or around May 15, 2023.
27 PLAINTIFF worked for DEFENDANTS at DEFENDANTS’ Ontario, California locations(s).
28

1 6. Defendant QVC, INC., is a Delaware Corporation that, at all relevant times, was
2 authorized to do business within the State of California and is doing business in the State of
3 California.

4 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
5 offices, stores, manufacturing centers, distribution centers, warehouses, facilities and/or other
6 location(s) in California, including but not limited to the offices, stores, manufacturing centers,
7 distribution centers, warehouses, and/or facilities located in Ontario, California. DEFENDANTS,
8 through its various locations serves the manufacturing, distribution, ecommerce, retail and/or
9 consumer products industry.

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

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

26 **JOINT LIABILITY**

27 10. Under California law, the definition of the terms “to employ” are broadly construed
28

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

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

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

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

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

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

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

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

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

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

PAGA ALLEGATIONS

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

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

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

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

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

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

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

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

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

26 **FACTUAL ALLEGATIONS**

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

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

3 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFFS worked for
4 DEFENDANTS as a non-exempt employee with a job title of, fulfillment member, warehouse
5 worker or a similar title from in or around October 2021 through in or around May 15, 2023.
6 PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Ontario, California location(s).
7 PLAINTIFF regularly worked at least eight (8) to ten (10) hours per day hours, at least at least five
8 (5) days per week days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted
9 by DEFENDANTS as hours worked. PLAINTIFF was also compensated with bonuses/incentive
10 pay and/or shift differential pay and/or other non-discretionary compensation.

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

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

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

26 30. Based on information and belief, Aggrieved Employees were not paid for all hours
27 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
28 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-

1 the clock work policies and/or practices. For example, Aggrieved Employees were frequently
2 required to stand in line behind other employees to access DEFENDANTS' time-keeping
3 system/terminal and/or were required to spend time reinitiating DEFENDANTS' time-keeping
4 system before they could clock in for the start of their shifts and/or after completing a purported
5 meal period. For example, PLAINTIFF typically spent at least approximately four (4) minutes
6 standing in line each workday before PLAINTIFF could access DEFENDANTS' time-keeping
7 system/terminal to clock in for the start of PLAINTIFF's shift, which said off-the-clock waiting
8 time spent under DEFENDANTS' control each workday was neither recorded nor compensated by
9 DEFENDANTS, resulting in DEFENDANTS' failure to compensate PLAINTIFF for all work time
10 and the underpayment of wages owed to PLAINTIFF, among other violations of the Labor Code
11 described herein. Based on information and belief, DEFENDANTS required Aggrieved Employees
12 to be at their assigned workstations at the start of a scheduled shift, thereby forcing Aggrieved
13 Employees to gather work-related equipment and/or safety gear, make any necessary adjustments
14 to tools/equipment and/or perform maintenance/cleaning tasks, don work clothing/uniforms and/or
15 protective equipment, and/or complete other work tasks prior to their scheduled shift and/or prior to
16 clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

17 31. Based on information and belief, Aggrieved Employees were required to complete
18 other off-the-clock work tasks after clocking out for the end of their shifts and/or during
19 uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum
20 and overtime wages owed to Aggrieved Employees. For example, based on information and belief,
21 DEFENDANTS required Aggrieved Employees to clock out for the end of their shifts but to
22 continue working due to the need to return/maintain tools, clean and/or organize their work
23 stations/areas, provide shift status updates and/or debriefings and/or participate in work meetings,
24 respond to work-related communications and/or perform other work tasks off-the-clock, resulting
25 in the underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

26 32. Based on information and belief, DEFENDANTS did not compensate Aggrieved
27 Employees for all time spent donning and doffing personal protective equipment, safety equipment
28 and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses, hats/bump caps/safety helmets

1 and/or face masks) during meal periods, before the start of a scheduled shift, and after completing a
2 scheduled shift, resulting in DEFENDANTS' failure to pay Aggrieved Employees for all work time
3 and the underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

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

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

16 35. Based on information and belief, DEFENDANTS required Aggrieved Employees to
17 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
18 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.
19 Based on information and belief, Aggrieved Employees were also pressured to complete at least
20 some additional work tasks off-the-clock in order to meet DEFENDANTS' goals and expectations.
21 For example, based on information and belief, Aggrieved Employees were required to complete off-
22 the-clock work outside of scheduled shifts due to including but not limited to, work-related phone
23 calls and/or messages they received to their phones and/or mobile devices and were required to
24 respond to, including but not limited to, communications from supervisors regarding scheduling
25 and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved Employees.

26 36. Based on information and belief, DEFENDANTS failed to pay Aggrieved
27 Employees for time they were required to spend completing orientation, policy questionnaires,
28 and/or time spent completing the onboarding process including but not limited to reviewing various

1 documents and policies provided by DEFENDANTS. Based on information and belief, this work time
2 was completed off-the-clock and was not compensated.

3 37. Based in information and belief, DEFENDANTS implemented a time-rounding
4 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
5 compensable time because the time-rounding system implemented by DEFENDANTS would
6 almost always, if not always, result in understating actual compensable work time.

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

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

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

22 41. Based on information and belief, DEFENDANTS failed to incorporate all non-
23 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive
24 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
25 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
26 wages owed to PLAINTIFF and other Aggrieved Employees. For example, based on information
27 and belief, PLAINTIFF and other Aggrieved Employees were compensated with bonuses/incentive
28 pay and/or shift differential pay and/or other non-discretionary compensation, however,

1 DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate(s) of
2 pay used to calculate the owed overtime rate(s) resulting in the miscalculation and underpayment of
3 overtime wages owed to PLAINTIFF and other Aggrieved Employees.

4 42. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
5 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
6 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
7 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
8 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
9 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
10 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
11 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
12 completely. For example, based on information and belief, Aggrieved Employees were forced to
13 take late meal periods in order to complete assigned job duties. Based on information and belief,
14 Aggrieved Employees were at times, interrupted during purported meal periods and/or had meal
15 periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned
16 job duties.

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

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

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

1 PLAINTIFF was typically required to perform pre-shift off-the-clock work in the form of including
2 but not limited to, waiting in line to access DEFENDANTS' timekeeping system / terminal and/or
3 reinitiating DEFENDANTS' timekeeping system resulting daily/near daily pre-shift off-the-clock
4 work that DEFENDANTS failed to take into account when scheduling any meal periods, resulting
5 in late meal periods.

6 46. Based on information and belief, despite DEFENDANTS' failure to provide lawful
7 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
8 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
9 deducting at least thirty minutes and/or forty-five minutes per shift for missed, on-duty, and/or
10 otherwise unlawful meal periods despite having actual and/or constructive knowledge that
11 PLAINTIFF and other Aggrieved Employees did not receive lawful meal periods.

12 47. Moreover, based on information and belief, Aggrieved Employees who worked shifts
13 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.
14 For example, at times, PLAINTIFF worked shifts lasting longer than ten (10) hours due to including
15 but not limited to, preshift off-the-clock work, however, DEFENDANTS failed to provide
16 PLAINTIFF with any version of a second meal period when PLAINTIFF worked shifts lasting
17 longer than ten (10) hours.

18 48. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
19 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
20 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
21 did DEFENDANTS have any sort of compliant policy in practice.

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

28 50. Based on information and belief, DEFENDANTS had actual and/or constructive

1 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods
2 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
3 violation of California's meal period laws.

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

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

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

19 54. Based on information and belief, DEFENDANTS did not have a have a compliant
20 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
21 practice. For example, based on information and belief, Aggrieved Employees were at times unable
22 to take compliant rest periods due to their need to complete assigned job duties and/or were unable
23 to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted
24 to DEFENDANTS' premises.

25 55. Based on information and belief, DEFENDANTS failed to authorize and permit rest
26 periods that were a "net" ten minutes in a suitable rest area. For example, to the extent rest periods
27 were provided, DEFENDANTS frequently if not always required PLAINTIFF and other Aggrieved
28 Employees to take rest periods that were less than a full ten minutes due to including but not limited

1 to PLAINTIFF and other Aggrieved Employees being required to walk long distances across the
2 warehouse/DEFENDANTS' facilities to any rest area from their workstations and/or from any rest
3 area back to their workstations, resulting in the denial of a full "net" ten-minute rest period to
4 PLAINTIFF and other Aggrieved Employees during many if not all shifts worked, in violation of
5 California rest period law.

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

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

12 58. Based on information and belief, DEFENDANTS implemented policies and/or
13 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
14 DEFENDANTS' control during rest periods.

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

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

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

1 hours.”

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

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

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

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

26 66. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
27 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
28 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF

1 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
2 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
3 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
4 other off-the-clock work policies and practices described above) which results in a violation of
5 Labor Code section 226(a).

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

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

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

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

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

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

25 73. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
26 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
27 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
28 from Aggrieved Employees paychecks during the relevant period, including but not limited to,

1 deducting costs of uniforms and/or other business costs and/or deducting wages for purported
2 overpayments from previous pay periods and/or unlawfully deducting wages for negligently
3 damaged property. Such a practice is in violation of including but not limited to, Labor Code
4 Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

13 75. DEFENDANTS have failed and continue to fail to keep accurate and complete
14 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
15 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
16 employer control during unpaid meal periods, failure to record the true start and end times of meal
17 periods, shift start times and shift end times, and other off-the-clock work policies and practices
18 described herein.

19 76. **Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432.** Time and Pay
20 Records. Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that
21 employers keep the following information on file for each employee for a minimum of three years:
22 The employee's dates of employment; the employee's hourly rates and the corresponding number
23 of hours worked by the employee at each hourly rate, when the employee begins and ends each work
24 period (including meal periods) and split intervals; total hours worked by the employee; all
25 deductions; gross wages earned; and net wages earned.

26 77. Section (b) of Labor Code section 226 further requires employers to "afford current
27 and former employees the right to inspect or receive a copy of records pertaining to their
28 employment upon reasonable request to the employer." Section (c) of Labor Code section 226

1 provides that, “an employer who receives a written or oral request to inspect or receive a copy of
2 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
3 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
4 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
5 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
6 the employer. Lab. Code section 226(f).

7 78. Personnel Records. In addition to their right to time and pay records, employees, and
8 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
9 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
10 section 432 further specifies that employers must furnish copies of all employment records bearing
11 the employee’s signature.

12 79. Labor Code section 1198.5 also requires that the file be made available for inspection
13 or receipt within a “reasonable” amount of time, but “not later than 30 calendar days from the date
14 the employer receives a written request.” An employer’s failure to comply within this timeframe
15 likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty
16 from the employer. Lab. Code section 1198.5(k).

17 80. Based on information and belief, DEFENDANTS failed to timely produce or make
18 available a current or former employee’s personnel records and/or payroll records when requested
19 pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example,
20 PLAINTIFF sent written requests for payroll and personnel records to DEFENDANTS. Yet,
21 DEFENDANTS failed to timely produce complete records within the time periods delineated by
22 California labor law. Based on information and belief, DEFENDANTS failed and continue to fail
23 to timely produce complete payroll and personnel records when requested by other Aggrieved
24 Employees.

25 81. These violations subject DEFENDANTS to penalties under Labor Code sections
26 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for
27 each Aggrieved Employee, results in a separate civil penalty.

28 82. **Failure to Provide Written Commission Agreements.** Labor Code section 2751

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

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

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

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

26 86. **Unreimbursed Business Expenses.** Based on information and belief,
27 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
28 as a direct consequence of the performance of their job duties without providing reimbursement, in

1 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
2 Aggrieved Employees were improperly required to provide and maintain work tools that are
3 supposed to be the responsibility of the employer.

4 87. Based on information and belief, DEFENDANTS shifted the costs of doing business
5 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
6 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
7 including but not limited to including but not limited to, uniforms/work clothing/work
8 shoes/personal protective/safety gear and the use of Aggrieved Employees' personal cell
9 phones/mobile devices, internet and/or data usage for work-related purposes, including but not
10 limited to, to receive and respond to work-related messages and/or phone calls. For example, based
11 on information and belief, Aggrieved Employees were required to receive and respond to work-
12 related calls and/or messages from supervisors and/or other employees regarding scheduling and/or
13 other work tasks but were not reimbursed by DEFENDANTS at all and/or in full for these business
14 expenses.

15 88. Based on information and belief, Aggrieved Employees were not reimbursed for the
16 cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform
17 their assigned job duties and/or for the costs of purchasing and/or maintaining work
18 uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks). Based on
19 information and belief, at times, Aggrieved Employees were not reimbursed for the business use of
20 their personal vehicles, including mileage, wear and tear and/or cost of fuel when they were required
21 to drive around and/or between job sites, and/or otherwise use their personal vehicles in carrying
22 out the duties assigned by DEFENDANTS.

23 89. As such, DEFENDANTS failed to compensate Aggrieved Employees at the legally
24 mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant
25 period. As explained above, based on information and belief, Aggrieved Employees were not
26 reimbursed for the cost of using their personal phone for work-related purposes and/or the cost of
27 purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety
28 gear.

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

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

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

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

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

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

1 violate the applicable Wage Order, and the California Labor Code, including but not limited to
2 section 1198.

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

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

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

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

1 used sick leave and the balance of paid sick leave.

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

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

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

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

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

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

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

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

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

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

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

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

26 110. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
27 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
28 were due and owing upon termination or resignation. Based on information and belief,

1 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
2 requirements of Labor Code sections 201-202.

3 111. Upon separation of employment, Aggrieved Employees' final paychecks were not
4 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
5 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
6 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
7 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
8 accrued rates.

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

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

21 114. Based on information and belief, DEFENDANTS have a policy and practice of
22 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
23 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
24 office or agency of DEFENDANTS in the county where the work was performed, in violation of
25 Labor Code Section 208.

26 115. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

27 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

28 116. Based on information and belief, DEFENDANTS required Aggrieved Employees to

1 agree in writing to unlawful conditions of employment including but not limited to unlawful non-
2 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements,
3 unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law
4 provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining
5 and/or continuing employment in violation of Labor Code section 432.5.

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

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

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

1 background check.

2 120. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
3 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
4 section 432.5.

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

10 122. Based on further information and belief, DEFENDANTS knew that requiring
11 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
12 condition of obtaining and/or holding employment was unlawful.

13 123. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
14 condition of employment, DEFENDANTS violated Labor Code section 432.5.

15 Unlawful Inquires into Criminal History

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

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

25 Unlawful PAGA Waiver

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

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

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

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

17 130. **Failure to Provide a Safe and Healthful Workplace.** During the PAGA Period,
18 DEFENDANTS have had a policy and practice of failing, within one business day after
19 DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to
20 COVID-19, to notify PLAINTIFF and other Aggrieved Employees who were on the premises at the
21 same worksite as the qualifying individual within the infectious period, and the employers of
22 subcontracted employees who were on the premises at the same worksite as the qualifying individual
23 within the infectious period and the exclusive representative, if any, of the cleaning and disinfection
24 plan that the employer is implementing per the guidelines of the COVID 10 prevention program per
25 the Cal-OSHA COVID-19 Emergency Temporary Standards, among other things in violation of
26 Labor Code sections 6409.6 and/or 6432.

27 131. 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)**

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

9 **Failure to Keep Accurate Records**

10 133. 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.

14 134. 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, and
18 accurate itemized wage statements.

19 135. 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.¹

25 **Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432**

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

27 ¹ 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.

6 137. 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).

15 138. 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.

20 139. Labor Code section 1198.5 also requires that the file be made available for inspection
21 or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date
22 the employer receives a written request." An employer's failure to comply within this timeframe
23 likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty
24 from the employer. Lab. Code section 1198.5(k).

25 140. Based on information and belief, DEFENDANTS failed to timely produce or make
26 available a current or former employee's personnel records and/or payroll records when requested
27 pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example,
28 PLAINTIFF sent written requests for payroll and personnel records to DEFENDANTS. Yet,

1 DEFENDANTS failed to timely produce complete records within the time periods delineated by
2 California labor law. Based on information and belief, DEFENDANTS failed and continue to fail
3 to timely produce complete payroll and personnel records when requested by other Aggrieved
4 Employees.

5 141. These violations subject DEFENDANTS to penalties under Labor Code sections
6 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for
7 each Aggrieved Employee, results in a separate civil penalty.

8 **Meal Period Violations**

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

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

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

25 145. Employers must pay employees an additional hour of wages at the employees’
26 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
27 meal period, first meal period provided after five (5) hours, second meal period provided after 10
28 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to

1 provide an employee a meal period in accordance with the applicable provision of this Order, the
2 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
3 for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

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

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

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

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

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

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

1 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

2 **Rest Period Violations**

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

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

27 154. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
28 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained

1 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
2 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
3 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
4 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

21 **Failure to Provide Suitable Resting Facilities**

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

26 160. DEFENDANTS' locations/facilities are generally similar in layout and design, and
27 there was, and continues to be, space that allows for a resting facility that employees may use to
28 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved

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

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

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

12 **Minimum and Overtime Wage Violations**

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

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

26 165. As explained above, DEFENDANTS violated California's minimum and overtime
27 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
28 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift

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

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

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

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

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

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

28 **Failure to Provide Written Commission Agreements**

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

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

9 **Violation of Labor Code Section 226.2**

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

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

27 **Statutory Wage Violations**

28 175. California Labor Code section 223 makes it unlawful for an employer to secretly pay

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

11 **Refusal to Make Payment**

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

20 **Standard Conditions of Labor Violations**

21 177. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
22 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
23 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
24 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
25 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,

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

1 minimum/overtime wages and other violations described herein result in separate violations of
2 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
3 1197.1 and 2699.

4 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

15 **Wage Statement Violations**

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

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

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

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

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

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

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

1 entity that is the employer.

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

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

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

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

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

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

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

27 **Unlawful Deductions**

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

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

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

13 **Reporting Time Pay Violations**

14 202. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

28 205. Based on information and belief, DEFENDANTS have a policy and practice of

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

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

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

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

17 **Seating Violations**

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

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

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

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

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

1 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
2 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
3 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

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

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

20 **Sick Leave Violations**

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

28 215. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees

1 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
2 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
3 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
4 Aggrieved Employees’ intelligent exercise of their paid sick leave.

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

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

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

18 219. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

19 220. On information and belief, PLAINTIFF alleges that all of these practices were
20 experienced and continue to be experienced by other Aggrieved Employees.

21 221. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
22 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
23 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

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

25 222. Labor Code § 248.2 provides that all employers with 26 or more employees are
26 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
27 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
28 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved

1 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
2 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
3 Labor Code section 248.6.

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

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

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

18 **Untimely Payment of Final Wages**

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

26 226. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
27 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
28 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.

1 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
2 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also,
3 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

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

12 228. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
13 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
14 256.

15 **Violation of Labor Code Section 208**

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

20 230. Based on information and belief, DEFENDANTS have a policy and practice of
21 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
22 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
23 office or agency of DEFENDANTS in the county where the work was performed, in violation of
24 Labor Code Section 208.

25 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

26 231. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
27 require any employee or applicant for employment to agree, in writing, to any term or condition
28 which is known by such employer...to be prohibited by law.” DEFENDANTS required and

1 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
2 conditions of employment including but not limited to unlawful non-solicitation/non-compete
3 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
4 waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or
5 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment
6 in violation of Labor Code section 432.5.

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

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

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

26 235. Based on further information and belief, DEFENDANTS required Aggrieved
27 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
28 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA

1 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
2 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

3 236. Based on further information and belief, DEFENDANTS knew that requiring
4 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
5 condition of obtaining and/or holding employment was unlawful.

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

8 Unlawful Inquires into Criminal History

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

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

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

23 Unlawful PAGA Waiver

24 241. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring
25 PLAINTIFF and other Aggrieved Employees to agree in writing to other unlawful agreements,
26 including but not limited to, an unlawful waiver of PAGA and/or representative actions as a
27 condition of employment.

28 242. An action pursuant to PAGA “...is a representative action on behalf of the state”

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

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

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

16 **Failure to Provide a Safe and Healthful Workplace**

17 245. Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the
18 California Occupational Safety and Health Act ("Cal OSHA"), employers must maintain a safe and
19 healthful place of employment. Specifically, Labor Code section 6400, requires the following:

20 246. (a) Every employer shall furnish employment and a place of employment that is safe
21 and healthful for the employees therein...

22 247. Labor Code section 6401 provides as follows:

23 248. Every employer shall furnish and use safety devices and safeguards, and shall adopt
24 and use practices, means, methods, operations, and processes which are reasonably adequate to
25 render such employment and place of employment safe and healthful. Every employer shall do every
26 other thing reasonably necessary to protect the life, safety, and health of employees.

27 249. Labor Code section 6402 prohibits the following:

28 250. No employer shall require, or permit any employee to go or be in any employment

1 or place of employment which is not safe and healthful.

2 251. Similarly, Labor Code section 6404 provides as follows:

3 252. No employer shall occupy or maintain any place of employment that is not safe and
4 healthful.

5 253. In addition to the above, Labor Code section 6403 requires that employees provide
6 safety devices to its employees. Labor Code section 6403 states:

7 254. No employer shall fail or neglect to do any of the following:

8 255. (a) To provide and use safety devices and safeguards reasonably adequate to render
9 the employment and place of employment safe.

10 256. (b) To adopt and use methods and processes reasonably adequate to render the
11 employment and place of employment safe.

12 257. (c) To do every other thing reasonably necessary to protect the life, safety, and health
13 of employees.

14 258. Similarly, Labor Code section 6406(d) states the following:

15 259. No person shall do any of the following ... (d) Fail or neglect to do every other thing
16 reasonably necessary to protect the life, safety, and health of employees.

17 260. Finally, Labor Code section 6407 provides:

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

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

24 263. At all relevant times, DEFENDANTS employed PLAINTIFF and Aggrieved
25 Employees subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times,
26 DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and
27 safeguards and of failing to adopt and use practices, means, methods, operations, and/or processes
28 which are reasonably adequate to render such employment and place of employment safe and

1 healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times
2 DEFENDANTS had and have a policy and practice of requiring or permitting employees to go or
3 be in in any employment or place of employment which is not safe and healthful, pursuant to Labor
4 Code section 6402. At all relevant times, DEFENDANTS had and have a policy and practice of
5 failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render
6 the employment and place of employment safe; adopt and use methods and processes reasonably
7 adequate to render the employment and place of employment safe; and do every other thing
8 reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code
9 section 6403.

10 264. PLAINTIFF is informed and believes and thereon alleges that these failures include,
11 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or
12 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to
13 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
14 conditions between PLAINTIFF and/or other Aggrieved Employees.

15 265. At all relevant times, DEFENDANTS had a policy and practice of failing to give
16 sufficient, adequate and proper notice to PLAINTIFF and/or other Aggrieved Employees of the
17 COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace
18 exposure from a qualifying individual as required by Labor Code section 6409.6. PLAINTIFF is
19 informed and believes that numerous employees contracted COVID-19 during the relevant time
20 periods, but that DEFENDANTS failed to provide notice to employees. Based on further
21 information and belief, DEFENDANTS do not or did not keep adequate records of written
22 notifications required in subdivision (a) for a period of at least three years.

23 266. At all relevant times, DEFENDANTS had and have a policy and practice of failing
24 within one business day after DEFENDANTS or a representative of DEFENDANTS received notice
25 of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other Aggrieved
26 Employees and/or their exclusive representatives, who were on the premises at the same worksite
27 as a qualifying individual who was within the infectious period that they may have been exposed to
28 COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and

1 practice of failing within one business day after DEFENDANTS or a representative of EMLOYER
2 received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other Aggrieved
3 Employees who were on the premises at the same worksite as the qualifying individual within the
4 infectious period and the exclusive representative, if any, with information regarding COVID-19-
5 related benefits to which the employee may be entitled under applicable federal, state or local laws,
6 including but not limited to, workers' compensation, and options for exposed employees, including
7 COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or
8 negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the
9 employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and
10 6432.

11 267. At all relevant times, DEFENDANTS had and have a policy and practice of failing
12 within one business day after DEFENDANTS or a representative of DEFENDANTS received a
13 notice of potential exposure to COVID-19 to notify PLAINTIFF and other Aggrieved Employees
14 who were on the premises at the same worksite as the qualifying individual within the infectious
15 period, and the employers of the subcontracted employees who were on the premises at the same
16 worksite as the qualifying individual within the infectious period and the exclusive representative,
17 if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of
18 the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per
19 the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated,
20 without limitation, Labor Code sections 6409.6 and 6432.

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

1 269. PLAINTIFF is informed and believes , and based thereon alleges that
2 DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and
3 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule
4 for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
5 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
6 blowers; and a sufficient number of toilets to be used by each of sex of employee.

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

14 271. Based on information and belief, DEFENDANTS failed to protect Aggrieved
15 Employees from exposure to COVID-19 due to, including but not limited to, failing to
16 maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address
17 hazards related to the COVID-19 virus.

18 272. As such, DEFENDANTS failed to comply with the occupational safety and health
19 standards, failed to do everything reasonably necessary to protect the health and safety of
20 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
21 necessary to maintain a safe and healthful workplace.

22 273. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
23 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
24 is subject to civil penalties.

25 274. Under the provisions of PAGA and the above mentioned Labor Code sections,
26 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
27 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
28 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, 6432 and all applicable

1 Wage Orders as well as all interpretations of these laws by California Courts and administrative
2 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
3 the following penalties:

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

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

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of 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 26, 2023

CROSNER LEGAL, PC

By: 

Jamie Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff
THERESA MOORE