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

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**

14 CARLOS HERNANDEZ MOTTO, on behalf
of the State of California, and others similarly
situated and aggrieved,

15 Plaintiff,

16 v.

17
18 AMWARE FULFILLMENT, LLC, a
Delaware Limited Liability Company; and
19 DOES 1-100, inclusive,

20 Defendants.

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Superior Court of California,
County of Los Angeles
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Executive Officer/Clerk of Court,
By Y. Tarasyuk, Deputy Clerk

Case No.: **23STCV24821**

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

1 Plaintiff, CARLOS HERNANDEZ MOTTO, (“PLAINTIFF”), an individual on behalf of
2 PLAINTIFF, the State of California, and all other Aggrieved Employees (as defined below), hereby
3 files this Complaint against Defendants AMWARE FULFILLMENT, LLC, a Delaware Limited
4 Liability Company; and DOES 1-100, inclusive, (collectively referred to herein as
5 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

15 3. Venue is proper in this judicial district and the County of Los Angeles pursuant to
16 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within
17 this judicial district and conduct alleged by PLAINTIFF herein occurred in this this judicial district.
18 *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue
19 in a PAGA action is proper in any county where the defendants committed Labor Code violations
20 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 worked for DEFENDANTS as a non-exempt employee for
25 approximately three years through in or around September 2022. PLAINTIFF worked as a
26 maintenance technician and/or other titles. PLAINTIFF’s duties included but were not limited to
27 performing maintenance work, driving forklifts, and/or arranging pallets. PLAINTIFF regularly
28 worked out of DEFENDANTS’ warehouse facility in Van Nuys, California.

6. Defendant AMWARE FULFILLMENT, LLC is a Delaware Limited Liability Company that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

7. DEFENDANTS own, operate, and/or manage warehouses and/or facilities that help other businesses fulfill/ship and/or process e-commerce orders among other related services. DEFENDANTS own, operate and/or manage various facilities including but not limited to two facilities in Van Nuys, California and one facility in San Bernardino, California.

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

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

JOINT LIABILITY

10. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49

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

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

21 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
22 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
23 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
24 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
25 policies and practices regardless of the location(s) where they worked. Among other things,
26 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
27 in DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control
28 over the day-to-day operations and employment matters, including the power to hire and fire, set

1 schedules, issue employee policies, and determine rates of compensation across its locations in
2 California; (3) DEFENDANTS utilize the same policies and procedures for all California
3 employees, including issuing the same employee handbooks and other form agreements; (4)
4 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
5 employment matters; and, (6) DEFENDANTS share employees.

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

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

26 15. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
27 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
28 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved

1 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
2 PLAINTIFF seeks relief in this Complaint.

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

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

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

15 **PAGA ALLEGATIONS**

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

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

23 20. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
24 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
25 limitations period and suffered one or more of the Labor Code violations set forth herein.
26 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
27 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
28 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved

1 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by
2 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
3 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
4 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
5 *Id.* at 760-761.

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

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

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

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

17 **FACTUAL ALLEGATIONS**

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

22 25. PLAINTIFF worked for DEFENDANTS as a non-exempt employee for
23 approximately three years through in or around September 2022. PLAINTIFF worked as a
24 maintenance technician and/or other titles. PLAINTIFF’s duties included but were not limited to
25 performing maintenance work, driving forklifts, and/or arranging pallets. PLAINTIFF regularly
26 worked out of DEFENDANTS’ warehouse facility in Van Nuys, California. PLAINTIFF regularly
27 worked at least eight (8) hours per day at least five (5) to (6) days per week. DEFENDANTS paid
28 PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked.

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

3 27. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
4 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
5 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
6 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
7 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
8 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
9 below.

10 28. Based on information and belief, DEFENDANTS implemented a policy and/or
11 practice of rounding meal period start and end times and/or automatically deducting at least thirty
12 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
13 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
14 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
15 PLAINTIFF and Aggrieved Employees of all wages owed. For example, PLAINTIFF was
16 regularly interrupted during meal periods as PLAINTIFF received work related communications
17 during purported off-the-clock meal periods. PLAINTIFF was not paid for this time, resulting in
18 unpaid minimum and overtime wages as well as unlawful meal periods.

19 29. Based on information and belief, Aggrieved Employees were not paid for all hours
20 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
21 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
22 the clock work policies and/or practices. For example, based on information and belief, PLAINTIFF
23 and other Aggrieved Employees were required to perform work prior to clocking in, including but
24 not limited to pre-shift temperature screenings and/or pre-shift security screenings. Based on
25 information and belief, Aggrieved Employees were required to undergo post shift security
26 screenings when leaving DEFENDANTS' facilities.

27 30. Based on information and belief, Aggrieved Employees were required to don and
28 doff protective equipment prior to clocking into work. Based on information and belief, at times,

1 Aggrieved Employees were required to stand in line behind other employees to access Aggrieved
2 Employees' time-keeping system and/or were required to spend time reinitiating DEFENDANTS'
3 time-keeping system before they could clock in for the start of their shifts and/or after completing a
4 purported meal period.

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

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

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

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

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

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

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

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

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

27 40. Based on information and belief, DEFENDANTS required Aggrieved Employees to
28 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take

1 into account when scheduling meal periods for Aggrieved Employees. Based on information and
2 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

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

9 42. Moreover, based on information and belief, Aggrieved Employees who worked shifts
10 of more than ten hours did not receive a second legally compliant thirty (30) minute meal perio

11 43. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
12 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
13 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
14 did DEFENDANTS have any sort of compliant policy in practice.

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

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

25 46. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
26 additional hour of wages at their respective regular rates of compensation for each workday a lawful
27 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
28 each workday a lawful meal period was not provided and/or failed to pay the proper meal period

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

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

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

12 49. Based on information and belief, DEFENDANTS did not have a have a compliant
13 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
14 practice. For example, based on information and belief, Aggrieved Employees were at times, unable
15 to take compliant rest periods due to their need to complete assigned job duties and/or were unable
16 to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted
17 to DEFENDANTS' premises. For example, based on information and belief, PLAINTIFF was at
18 times, unable to take compliant rest periods due to PLAINTIFF's need to complete assigned job
19 duties and/or was unable to take a net ten-minute rest period in a suitable rest area and/or had
20 purported rest periods restricted to DEFENDANTS' premises. Moreover, PLAINTIFF was
21 regularly interrupted during purported rest periods as PLAINTIFF frequently received work-related
22 communications during purported rest periods.

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

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

1 52. Based on information and belief, DEFENDANTS implemented policies and/or
2 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
3 DEFENDANTS' control during rest periods.

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

7 54. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
8 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
9 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
10 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
11 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
12 shift differential pay, and/or other non-discretionary compensation into the regular rate of
13 compensation for purposes of calculating the owed rest period premium.

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

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

28 57. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities

1 during their hours of work, particularly during meal and/or rest periods.

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

5 59. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
6 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
7 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
8 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
9 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
10 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
11 applicable hourly rates in effect during the pay period and the corresponding number of hours
12 worked at each hourly rate by the employee.

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

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

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

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

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

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

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

12 67. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
13 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
14 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
15 from Aggrieved Employees paychecks during the relevant period, including but not limited to
16 deducting costs of uniforms and/or other business costs and/or deducting wages for purported
17 overpayments from previous pay periods and/or unlawfully deducting wages for negligently
18 damaged property. Such a practice is in violation of including but not limited to, Labor Code
19 Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

20 68. **Failure to Produce Employment Records.** Based on information and belief,
21 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
22 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
23 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
24 counsel, sent a written request for payroll and personnel records to DEFENDANTS on or around
25 including but not limited to, the following dates: September 27, 2022 and December 14, 2022. Yet,
26 DEFENDANTS failed to timely produce complete records within the time periods delineated by
27 California labor law. Based on information and belief, DEFENDANTS failed and continues to fail
28 to timely produce complete payroll and personnel records when requested by other Aggrieved

1 Employees. Based on information and belief, DEFENDANTS failed and continue to fail to timely
2 produce complete time, pay, and personnel records when requested by other Aggrieved Employees.

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

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

17 **71. Unreimbursed Business Expenses.** Based on information and belief,
18 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
19 as a direct consequence of the performance of their job duties without providing reimbursement, in
20 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
21 Aggrieved Employees were improperly required to provide and maintain work tools that are
22 supposed to be the responsibility of the employer.

23 **72.** Based on information and belief, DEFENDANTS shifted the costs of doing business
24 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
25 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
26 including but not limited to uniforms/work clothing and/or protective equipment (including but not
27 limited to face masks, and/or gloves) and/or the use of Aggrieved Employees' personal mobile
28 phones and data usage for work related purposes including but not limited to receiving and

1 responding to work related messages and/or phone calls.

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

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

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

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

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

1 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
2 compensation into the sick leave pay rate calculation.

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

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

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

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

25 82. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
26 that all employers with 26 or more employees are required to provide up to 80 hours for covered
27 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
28 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS

1 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
2 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
3 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

8 **84.** All applicable IWC Wage Orders, Section 14(A-B) provides:

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

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

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

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

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

27 **88. Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
28 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow

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

6 **89. Violation of Labor Code Section 208.** Based on information and belief,
7 DEFENDANTS have a policy and practice of failing to provide Aggrieved Employees who are
8 terminated with their final paychecks at the place of discharge and/or of failing to provide Aggrieved
9 Employees with their final paychecks at the office or agency of DEFENDANTS in the county where
10 the work was performed, in violation of Labor Code Section 208.

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

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

23 **92.** Based on further information and belief, DEFENDANTS failed to timely provide all
24 owed wages immediately upon discharge of employment. Based in information and belief, at times,
25 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
26 Aggrieved Employees would not be called in for work for longer than a single pay period due to
27 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
28 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at

1 the end of such periods of employment, in violation of including but not limited to Labor Code
2 section 201-202.

3 93. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

4 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

11 95. Based on information and belief, DEFENDANTS ordered unlawful financial credit
12 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
13 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
14 employment, in violation of California and Federal law, which results in a further violation of Labor
15 Code section 432.5.

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

25 97. Based on information and belief, DEFENDANTS required Aggrieved Employees to
26 agree in writing to a background check which failed to abide by the requirements set forth in CA
27 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
28 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,

1 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
2 the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,
3 failing to provide a way by which the individual could request a copy of the report, failing to disclose
4 the name, address, and telephone number of the third party preparing the report, and failing to
5 properly obtain authorization or consent to such a background check, and thus was an unlawful
6 background check.

7 98. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
8 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
9 section 432.5.

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

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

18 101. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
19 condition of employment, DEFENDANTS violated Labor Code section 432.5.

20 Unlawful Inquires into Criminal History

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

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

1 application in violation of California law, and in violation of Labor code section 432.5.

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

6 **FIRST CAUSE OF ACTION**
7 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
8 **2698, *ET SEQ.***
9 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
10 **Defendants)**

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

12 **Failure to Keep Accurate Records**

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

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

22 108. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
23 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
24 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
25 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
26 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
27 period during which the referenced statutes and Wage Order provisions were violated.¹

28 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
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

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

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

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

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

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

4 **Meal Period Violations**

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

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

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

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

28 117. As explained above, PLAINTIFF and other Aggrieved Employees were consistently

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

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

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

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

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

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

26 **Rest Period Violations**

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

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

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

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

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

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

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

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

17 **Failure to Provide Suitable Resting Facilities**

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

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

1 facilities outside of DEFENDANTS' premises which are not designated or reserved for their rest,
2 such as their personal vehicles.

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

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

8 **Minimum and Overtime Wage Violations**

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

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

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

1 137. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
2 Aggrieved Employees for all hours worked.

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

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

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

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

24 **Statutory Wage Violations**

25 142. California Labor Code section 223 makes it unlawful for an employer to secretly pay
26 wages lower than required by statute while purporting to pay legal wages. As described above,
27 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
28 earned minimum and overtime compensation for all hours worked which resulted in the payment of

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

8 **Refusal to Make Payment**

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

17 **Standard Conditions of Labor Violations**

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

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 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

12 **Wage Statement Violations**

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

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

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

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

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

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

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

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

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

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

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

10 164. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
11 Aggrieved Employees with accurate, itemized wage statements.

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

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

24 **Unlawful Deductions**

25 167. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
26 an employee any part of wages theretofore paid by said employer to said employee." Based on
27 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees

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

1 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
2 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
3 Section 2699.

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

10 **Violation of California Day of Rest Law**

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

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

21 **Seating Violations**

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

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

26 (A) All working employees shall be provided with suitable seats when the nature of the
27 work reasonably permits the use of seats.
28

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

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

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

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

17 176. The Aggrieved Employees worked in various positions. The nature of Aggrieved
18 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
19 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
20 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
21 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
22 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
23 separate civil penalty.

24 **Sick Leave Violations**

25 177. DEFENDANTS violated California's paid sick leave laws including, Labor Code
26 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
27 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
28 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to

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

4 178. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
5 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
6 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
7 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
8 Aggrieved Employees’ intelligent exercise of their paid sick leave.

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

13 180. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
14 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
15 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
16 were entitled to the maximum number of hours accruable.

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

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

23 183. On information and belief, PLAINTIFF alleges that all of these practices were
24 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

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

22 **Violation of Labor Code Section 208**

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

27 189. Based on information and belief, DEFENDANTS have a policy and practice of
28 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place

1 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
2 office or agency of DEFENDANTS in the county where the work was performed, in violation of
3 Labor Code Section 208.

4 **Untimely Payment of Final Wages**

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Unlawful Inquires into Criminal History

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

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

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

27 Under the provisions of PAGA and the above mentioned Labor Code sections,
28 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,

1 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
2 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
3 interpretations of these laws by California Courts and administrative bodies, as well as any other
4 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: October 11, 2023

CROSNER LEGAL, PC

By: 

Jamie K. Serb, Esq.
Nikki Trenner, Esq.
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Attorneys for Plaintiff,
CARLOS HERNANDEZ MOTTO