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Attorneys for Plaintiff EDUARDO GOMEZ FAUSTO
on behalf of the State of California,
and others similarly situated and aggrieved

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

EDUARDO GOMEZ FAUSTO, on behalf of
the State of California, and others similarly
situated and aggrieved,

Plaintiff,

v.

EAST COAST/WEST COAST
LOGISTICS, LLC, a Delaware Limited
Liability Company; NEED IT NOW
DELIVERY, INC., a New York
Corporation; CONSOLIDATED STAFFING
SOLUTIONS, INC., a California
Corporation; WORKFORCE
ENTERPRISES WFE, INC., a California
Corporation; and DOES 1-100, inclusive,

Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

SEP 19 2023

Chelsea Nuss
BY: Chelsea Nuss, Deputy

Case No.: **CIV SB 2322813**

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

1 Plaintiff, EDUARDO GOMEZ FAUSTO ("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 EAST COAST/WEST COAST LOGISTICS, LLC, a
4 Delaware Limited Liability Company; NEED IT NOW DELIVERY, INC., a New York
5 Corporation; CONSOLIDATED STAFFING SOLUTIONS, INC., a California Corporation;
6 WORKFORCE ENTERPRISES WFE, INC., a California Corporation; and DOES 1-100, inclusive,
7 (collectively referred to herein as "DEFENDANTS"). PLAINTIFF is informed and believes and
8 thereon alleges as follows:

9 INTRODUCTION

10 1. This is a representative action filed by PLAINTIFF on behalf of PLAINTIFF, all
11 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California's
12 Private Attorney General Act, Labor Code section 2698 *et. seq.* ("PAGA"), to recover civil penalties
13 (75% payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
14 Employees) for DEFENDANTS' violations of the California Labor Code as alleged below.

15 JURISDICTION AND VENUE

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

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

24 THE PARTIES

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

27 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
28 DEFENDANTS as a non-exempt employee with a job title of forklift driver and/or a similar title(s)

1 and/or position(s) during the relevant period. PLAINTIFF was assigned by Workforce Enterprises
2 to work at including but not limited to, East Coast/West Coast Logistics, LLC and/or Need it Now
3 Delivery, Inc., from including but not limited to, in or around June 2022 through in or around August
4 2022. In or about August 2022, PLAINTIFF began working for Consolidated Staffing Solutions,
5 which continued to place PLAINTIFF to work at, including but not limited to, East Coast/West
6 Coast Logistics, until the separation of PLAINTIFF's employment, on or around January 2023.
7 PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Colton, California location(s).

8 6. Defendant EAST COAST/WEST COAST LOGISTICS, LLC is a Delaware Limited
9 Liability Company that, at all relevant times, was authorized to do business within the State of
10 California and is doing business in the State of California.

11 7. Defendant NEED IT NOW DELIVERY, INC., is a New York Corporation that, at
12 all relevant times, was authorized to do business within the State of California and is doing business
13 in the State of California.

14 8. Defendant CONSOLIDATED STAFFING SOLUTIONS, INC., is a California
15 Corporation that, all relevant times was authorized to do business within the State of California and
16 is doing business in the State of California.

17 9. Defendant WORKFORCE ENTERPRISES WFE, INC., is a California Corporation
18 that, at all relevant times was authorized to do business within the State of California and is doing
19 business in the State of California.

20 10. Defendants EAST COAST/WEST COAST LOGISTICS, LLC and/or NEED IT
21 NOW DELIVERY, INC., own, operate, and/or manage warehouses, offices, plants, facilities and/or
22 other locations in California, including but not limited to the warehouses, offices, plants, and/or
23 facilities located in Colton, California operating under the name "The Gilbert Company."
24 DEFENDANTS have additional facilities in California including but not limited to locations in
25 Bloomington, Colton, Ontario, Pomona, and Stockton, California. DEFENDANTS through their
26 various facilities and/or other locations serve the delivery, logistics, and warehousing industry.

27 11. Defendants CONSOLIDATED STAFFING SOLUTIONS, INC., and/or
28 WORKFORCE ENTERPRISES WFE, INC., are staffing agencies that place or assign workers to

1 various companies in various industries including but not limited to workers assigned to EAST
2 COAST/WEST COAST LOGISTICS, LLC and/or NEED IT NOW DELIVERY, INC.

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

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

19 JOINT LIABILITY

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

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

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

16 16. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
17 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
18 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
19 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
20 policies and practices regardless of the location(s) where they worked. Among other things,
21 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
22 in DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control
23 over the day-to-day operations and employment matters, including the power to hire and fire, set
24 schedules, issue employee policies, and determine rates of compensation across its locations in
25 California; (3) DEFENDANTS utilize the same policies and procedures for all California
26 employees, including issuing the same employee handbooks and other form agreements; (4)
27 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
28 employment matters; and, (6) DEFENDANTS share employees.

1 17. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
2 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
3 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
4 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
5 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
6 considered the joint employers of PLAINTIFF and Aggrieved Employees. Moreover, based on
7 information and belief, Consolidated Staffing Solutions, Inc. (hereinafter referred to as
8 "Consolidated Staffing Solutions") and/or Workforce Enterprises WFE, Inc (hereinafter referred to
9 as "Workforce Enterprises") hired PLAINTIFF and entered into a written employment agreement
10 with PLAINTIFF. During PLAINTIFF's employment, Consolidated Staffing Solutions and/or
11 Workforce Enterprises maintained control over many aspects of PLAINTIFF's employment,
12 including, among other things, having the authority to discipline PLAINTIFF, change PLAINTIFF's
13 job assignment, change PLAINTIFF's work hours, change PLAINTIFF's rates of pay, and to
14 terminate PLAINTIFF's employment.

15 18. In addition, when PLAINTIFF was first hired, Consolidated Staffing Solutions
16 and/or Workforce Enterprises provided PLAINTIFF with orientation and training materials.
17 Consolidated Staffing Solutions and/or Workforce Enterprises issued PLAINTIFF written policies
18 concerning meal periods, rest breaks, timekeeping, hours worked, and payment of PLAINTIFF's
19 wages, with which PLAINTIFF was required to comply. Based on information and belief, among
20 other things, these policies provided that PLAINTIFF's weekly time records be submitted to
21 Consolidated Staffing Solutions and/or Workforce Enterprises, Inc., and Consolidated Staffing
22 Solutions and/or Workforce Enterprises was supposed to process PLAINTIFF's time records and
23 pay PLAINTIFF for all hours worked. Consolidated Staffing Solutions and/or Workforce
24 Enterprises exercised ultimate control over the payment of PLAINTIFF's wages, as Consolidated
25 Staffing Solutions and/or Workforce Enterprises issued PLAINTIFF her paychecks.

26 19. Finally, Consolidated Staffing Solutions and/or Workforce Enterprises directed
27 PLAINTIFF to comply with East Coast/West Coast Logistics, LLC and/or Need it Now Delivery,
28 Inc.'s policies and directions. PLAINTIFF is informed and believes that Consolidated Staffing

1 Solutions and/or Workforce Enterprises exercised the same control over, applied the same policies
2 and practices, and engaged in the same acts and omissions with regard to the other class members.
3 East Coast/West Coast Logistics, LLC and/or Need it Now Delivery, Inc., similarly suffered or
4 permitted PLAINTIFF to work for them or engaged PLAINTIFF to work for them. PLAINTIFF is
5 informed and believes that East Coast/West Coast Logistics, LLC and/or Need it Now Delivery,
6 Inc. entered into a written agreement with Consolidated Staffing Solutions and/or Workforce
7 Enterprises pursuant to which East Coast/West Coast Logistics, LLC and/or Need it Now Delivery,
8 Inc., paid Consolidated Staffing Solutions and/or Workforce Enterprises to provide it with workers,
9 including PLAINTIFF, to conduct East Coast/West Coast Logistics, LLC and/or Need it Now
10 Delivery, Inc.'s business operations - namely, to work in East Coast/West Coast Logistics, LLC
11 and/or Need it Now Delivery, Inc.'s production/processing centers and/or administration offices.
12 East Coast/West Coast Logistics, LLC and/or Need it Now Delivery, Inc. suffered or permitted
13 PLAINTIFF to work at East Coast/West Coast Logistics, LLC and/or Need it Now Delivery, Inc.
14 and for the entirety of PLAINTIFF's employment. East Coast/West Coast Logistics, LLC and/or
15 Need it Now Delivery, Inc. further exercised control over PLAINTIFF's wages, hours and working
16 conditions.

17 20. Based on information and belief, East Coast/West Coast Logistics, LLC and/or Need
18 it Now Delivery, Inc. also: (1) set PLAINTIFF's work hours and provided PLAINTIFF with
19 PLAINTIFF's work schedule; (2) provided PLAINTIFF with policies regarding meal periods and
20 rest breaks, with which PLAINTIFF was required to comply; (3) directly supervised PLAINTIFF's
21 work through its employees; (4) assigned PLAINTIFF job duties and trained PLAINTIFF on said
22 job duties; (5) exercised authority to reprimand and counsel PLAINTIFF regarding any work
23 performance and other issues; (6) exercised authority to end PLAINTIFF's work assignment at any
24 time, which essentially equated to a termination of employment as PLAINTIFF was not guaranteed
25 any other job assignments; (7) required PLAINTIFF to use its timekeeping system for purposes of
26 recording time worked; (8) determined whether and when PLAINTIFF would receive meal periods
27 and rest breaks; (9) subjected PLAINTIFF to unlawful schedules for taking meal periods and rest
28 breaks; and, (10) was responsible for recording when PLAINTIFF began and ended work shifts. On

1 information and belief, East Coast/West Coast Logistics, LLC and/or Need it Now Delivery, Inc.
2 issued further written policies and practices and guidelines governing PLAINTIFF's working
3 conditions with which PLAINTIFF was required to comply. PLAINTIFF is informed and believes
4 that East Coast/West Coast Logistics, LLC and/or Need it Now Delivery, Inc. exercised the same
5 control over, applied the same policies and practices, and engaged in the same acts and omissions
6 with regard to the other Aggrieved Employees.

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

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

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

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

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

10 **LIABILITY UNDER CALIFORNIA LABOR CODE SECTION 2810.3**

11 26. California Labor Code section 2810.3(b)(1) provides that “a client employer shall
12 share with the labor contractor all civil legal responsibility and civil liability for all workers supplied
13 by that labor contractor for . . . the payment of wages.” A “labor contractor” means “an individual
14 or entity that supplies, either with or without a contract, a client employer with workers to perform
15 labor within the client employer’s usual course of business.” Cal. Labor Code § 2810.3(a)(3). A
16 “client employer” is “a business entity, regardless of its form, that obtains or is provided workers to
17 perform labor within its usual course of business from a labor contractor.” Cal. Labor Code §
18 2810.3(a)(1)(A). Client employers do not include a business entity with a workforce of fewer than
19 twenty-five workers or with five or fewer workers provided by a labor contractor or labor contractors
20 to the client employer at any time. Cal. Labor Code § 2810.3(a)(1)(B). “Usual course of business”
21 means “the regular and customary work of a business, performed within or upon the premises or
22 worksite of the client employer.” Cal. Labor Code § 2810.3(a)(6).

23 27. CONSOLIDATED STAFFING SOLUTIONS, INC., and/or WORKFORCE
24 ENTERPRISES WFE, INC., is each a “labor contractor” in that it supplies a client employer, EAST
25 COAST/WEST COAST LOGISTICS, LLC and/or NEED IT NOW DELIVERY, INC, with
26 workers to perform labor within EAST COAST/WEST COAST LOGISTICS, LLC and/or NEED
27 IT NOW DELIVERY, INC.’s usual course of business.

28 28. EAST COAST/WEST COAST LOGISTICS, LLC and/or NEED IT NOW

1 DELIVERY, INC., is each a "client employer" as it obtains or is provided workers to perform labor
2 within its usual course of business from labor contractors, including but not limited to
3 CONSOLIDATED STAFFING SOLUTIONS, INC., and/or WORKFORCE ENTERPRISES WFE,
4 INC., has a workforce of more than twenty-five workers, and is supplied with at least five workers
5 from a labor contractor at any given time.

6 29. Under California Labor Code Section 2810.3, EAST COAST/WEST COAST
7 LOGISTICS, LLC and/or NEED IT NOW DELIVERY, INC, each a client employer, shares with
8 the labor contractor, CONSOLIDATED STAFFING SOLUTIONS, INC., and/or WORKFORCE
9 ENTERPRISES WFE, INC., all civil legal responsibility and civil liability for all workers supplied
10 by that labor contractor for the payment of wages.

11 30. PLAINTIFF complied with Labor Code Section 2810.3 by mailing certified a letter
12 outlining the substance of the allegations alleged herein to the "Client Employer," namely EAST
13 COAST/WEST COAST LOGISTICS, LLC and/or NEED IT NOW DELIVERY, INC., thirty (30)
14 days before filing suit.

15 31. Whenever and wherever reference is made in this complaint to any act or failure to
16 act by DEFENDANTS or co-Defendant, such allegations and references shall also be deemed to
17 mean the acts and/or failures to act by each Defendant acting individually, jointly and severally.

18 PAGA ALLEGATIONS

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

23 (1) All current and former non-exempt workers who were directly
24 employed by CONSOLIDATED STAFFING SOLUTIONS,
25 INC. and/or WORKFORCE ENTERPRISES WFE, INC.,
26 regardless of where those non-exempt workers were assigned or
27 staffed to work – in California at any time from one year plus 65
28 days from the filing of the initial Complaint through the present
("PAGA Period"); and

(2) All current and former non-exempt workers who were
assigned/staffed to work at EAST COAST/WEST COAST

1 LOGISTICS, LLC and/or NEED IT NOW DELIVERY, INC. by
2 CONSOLIDATED STAFFING SOLUTIONS, INC. and/or
3 WORKFORCE ENTERPRISES WFE, INC., and/or any other
4 staffing/temporary service agencies at any location in California
at any time from one year plus 65 days from the filing of the
initial Complaint through the present (“PAGA Period”); and

- 5 (3) All current and former non-exempt workers who were directly
6 employed by EAST COAST/WEST COAST LOGISTICS, LLC
7 and/or NEED IT NOW DELIVERY, INC., to work at any
8 location in California at any time from one year plus 65 days
from the filing of the initial Complaint through the present
9 (“PAGA Period”).

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

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

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

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

27 36. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
28

1 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
2 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
3 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
4 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
5 has duly accrued.

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

9 FACTUAL ALLEGATIONS

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

14 39. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
15 DEFENDANTS as a non-exempt employee with a job title of forklift driver and/or a similar title(s)
16 and/or position(s) during the relevant period. PLAINTIFF was assigned by Workforce Enterprises
17 to work at including but not limited to, East Coast/West Coast Logistics, LLC and/or Need it Now
18 Delivery, Inc., from including but not limited to, in or around June 2022 through in or around August
19 2022. In or about August 2022, PLAINTIFF began working for Consolidated Staffing Solutions,
20 which continued to place PLAINTIFF to work at, including but not limited to, East Coast/West
21 Coast Logistics, until the separation of PLAINTIFF's employment, on or around January 2023.
22 PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Colton, California location(s).
23 PLAINTIFF regularly worked at least eight (8) to twelve (12) hours per day, at least five (5) to six
24 (6) days per week.

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

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

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

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

12 43. Based on information and belief, Aggrieved Employees were not paid for all hours
13 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
14 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
15 the clock work policies and/or practices. For example, based on information and belief,
16 DEFENDANTS required Aggrieved Employees to be at their assigned workstations at the start of a
17 scheduled shift, thereby forcing Aggrieved Employees to gather work-related equipment and/or
18 safety gear, make any necessary adjustments to tools/equipment and/or perform
19 maintenance/cleaning tasks, don work clothing/uniforms and/or protective equipment, and/or
20 complete other work tasks prior to their scheduled shift and/or prior to clocking in/signing in,
21 thereby resulting in pre-shift off-the-clock work.

22 44. Based on information and belief, at times, Aggrieved Employees were required to
23 wait in line behind other Aggrieved Employees to access DEFENDANTS' time-keeping system
24 and/or terminal so they could then clock in for the start of their shifts which said waiting time spent
25 under DEFENDANTS' control that was neither recorded nor compensated, resulting in off-the-
26 clock work and DEFENDANTS' failure to compensate Aggrieved Employees for all hours worked
27 and the underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

28 45. Based on information and belief, Aggrieved Employees were required to complete

1 other off-the-clock work tasks after clocking out for the end of their shifts and/or during
2 uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum
3 and overtime wages owed to Aggrieved Employees. For example, based on information and belief,
4 DEFENDANTS required Aggrieved Employees to clock out for the end of their shifts but to
5 continue working due to the need to return/maintain tools, clean and/or organize their work
6 stations/areas, provide shift status updates and/or debriefings and/or participate in work meetings,
7 respond to work-related communications and/or perform other work tasks off-the-clock, resulting
8 in the underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

9 46. Based on information and belief, DEFENDANTS did not compensate Aggrieved
10 Employees for all time spent donning and doffing personal protective equipment, safety equipment
11 and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses, hats/bump caps/safety helmets
12 and/or face masks) during meal periods, before the start of a scheduled shift, and after completing a
13 scheduled shift, resulting in DEFENDANTS' failure to pay Aggrieved Employees for all work time
14 and the underpayment of minimum wages and overtime wages owed to Aggrieved Employees.
15 Based on information and belief, at times, DEFENDANTS' electronic employee time-keeping
16 system/app malfunctioned such that Aggrieved Employees were required to either reinitiate and/or
17 otherwise troubleshoot the system prior to being able to clock in and/or were unable to clock in at
18 all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work
19 and the underpayment of wages owed to Aggrieved Employees.

20 47. Based on information and belief, Aggrieved Employees experienced the same issues
21 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
22 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
23 Aggrieved Employees. Based on information and belief, Aggrieved Employees were required to
24 undergo security screenings and/or other mandated screenings before and/or after a scheduled shift
25 and/or before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock
26 work.

27 48. Based on information and belief, DEFENDANTS required Aggrieved Employees to
28 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their

1 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.
2 Based on information and belief, Aggrieved Employees were also pressured to complete at least
3 some additional work tasks off-the-clock in order to meet DEFENDANTS' goals and expectations.
4 For example, based on information and belief, Aggrieved Employees were required to complete off-
5 the-clock work outside of scheduled shifts due to including but not limited to, work-related phone
6 calls and/or messages they received to their phones and/or mobile devices and were required to
7 respond to, including but not limited to, communications from supervisors regarding scheduling
8 and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved Employees.

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

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

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

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

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

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

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

25 56. Based on information and belief, other Aggrieved Employees were consistently
26 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
27 interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing,
28 the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and

1 expectations.

2 57. Based on information and belief, DEFENDANTS implemented policies and/or
3 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
4 during unpaid meal periods.

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

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

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

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

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

27 63. Based on information and belief, DEFENDANTS had actual and/or constructive
28 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods

1 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
2 violation of California's meal period laws.

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

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

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

18 67. Based on information and belief, DEFENDANTS did not have a have a compliant
19 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
20 practice. For example, based on information and belief, Aggrieved Employees were at times unable
21 to take compliant rest periods due to their need to complete assigned job duties and/or were unable
22 to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted
23 to DEFENDANTS' premises. Also, per DEFENDANTS' unlawful rest period policy and practice,
24 Aggrieved Employees were permitted a maximum of two rest periods per shift even during shifts
25 lasting longer than ten (10) hours, in violation of California rest period law. Based on information
26 and belief, DEFENDANTS failed to authorize and permit rest periods that were a "net" ten minutes
27 in a suitable rest area, and instead, to the extent rest periods were provided, DEFENDANTS limited
28 PLAINTIFF and other Aggrieved Employees to only ten-minute rest periods, requiring them to be

1 back at their workstations within ten minutes of leaving, in violation of California rest period law.
2 Based on information and belief, PLAINTIFF and other Aggrieved Employees were not paid any
3 rest period premiums and/or were not paid a proper rest period for each missed and/or otherwise
4 legally noncompliant rest period, in violation of California rest period law.

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

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

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

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

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

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

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

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

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

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

23 78. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
24 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
25 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
26 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
27 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
28 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or

1 other off-the-clock work policies and practices described above) which results in a violation of
2 Labor Code section 226(a).

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

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

11 81. Based on information and belief, wage statements issued by DEFENDANTS failed
12 to list the inclusive dates of the pay period for which the Aggrieved Employees is being paid.

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

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

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

22 85. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
23 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
24 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
25 from Aggrieved Employees paychecks during the relevant period, including but not limited to
26 deducting costs of uniforms and/or other business costs and/or deducting wages for purported
27 overpayments from previous pay periods and/or unlawfully deducting wages for negligently
28 damaged property. For example, based on information and belief, DEFENDANTS deducted costs

1 of uniforms including without limitation, costs of safety vests DEFENDANTS required PLAINTIFF
2 and other Aggrieved Employees wear for work. Such a practice is in violation of including but not
3 limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under
4 Labor Code Section 2699.

5 **86. Failure to Produce Employment Records.** Based on information and belief,
6 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
7 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
8 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF through
9 counsel sent a written request for payroll and personnel records to DEFENDANTS on or around
10 including but not limited to the following dates: May 23, 2023, and July 3, 2023. Yet,
11 DEFENDANTS failed to timely produce complete records within the time periods delineated by
12 California labor law and/or failed to produce any records at all. Based on information and belief,
13 DEFENDANTS failed and continues to fail to timely produce complete payroll and personnel
14 records when requested by other Aggrieved Employees. Based on information and belief,
15 DEFENDANTS failed and continue to fail to timely produce complete time, pay, and personnel
16 records when requested by other Aggrieved Employees.

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

25 **88.** DEFENDANTS have failed and continue to fail to keep accurate and complete
26 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
27 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
28 employer control during unpaid meal periods, failure to record the true start and end times of meal

1 periods, shift start times and shift end times, and other off-the-clock work policies and practices
2 described herein.

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

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

20 91. For example, PLAINTIFF was frequently required to respond to work-related
21 calls/messages on his personal cell phone/mobile device, including but not limited to, throughout
22 PLAINTIFF's shifts, however, DEFENDANTS did not provide PLAINTIFF with any
23 reimbursement for this business use of PLAINTIFF's personal cell phone/mobile device.

24 92. Based on information and belief, Aggrieved Employees were not reimbursed for the
25 cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform
26 their assigned job duties and/or for the costs of purchasing and/or maintaining work
27 uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks). For example,
28 PLAINTIFF had to purchase steel toed boots, safety vest(s) and/or other work clothing, uniforms,

1 work shoes, and/or safety/protective equipment that DEFENDANTS required PLAINTIFF wear for
2 work, however, DEFENDANTS did not provide PLAINTIFF with any and/or full reimbursement
3 for these business expenses.

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

10 94. As explained above, based on information and belief, Aggrieved Employees were
11 not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost
12 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
13 protective/safety gear.

14 95. Based on information and belief, DEFENDANTS regularly failed to reimburse and
15 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
16 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
17 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
18 assigned by DEFENDANTS.

19 96. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
20 for all reasonable expenses associated with carrying out their duties required that Aggrieved
21 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
22 2802.

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

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

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

5 **99. Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
6 provides as follows:

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

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

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

26 103. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
27 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
28 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the

1 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
2 accrued sick leave hours on the correct number of hours worked (as a result of the
3 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
4 times/other required off-the-clock work including but not limited to unpaid meal periods) and by
5 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
6 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
7 compensation into the sick leave pay rate calculation.

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

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

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

26 107. As such, DEFENDANTS have violated California's paid sick leave laws and
27 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
28 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These

1 unlawful practices and polices violate Labor Code sections 245-248.5.

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

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

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

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

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

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

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

27 113. Moreover, based on information and belief, the nature of the work reasonably
28 permitted the use of seats for at least part of the time that Aggrieved Employees were working.

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

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

11 **115. 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 **116.** 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 **117.** 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.

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

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

13 120. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

14 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

26 123. Based on information and belief, DEFENDANTS also required Aggrieved
27 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
28 a condition of obtaining and/or holding employment in violation of the Investigative Consumer

1 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
2 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
3 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
4 FCRA when conducting background screenings for applicants, including but not limited to
5 Aggrieved Employees that were subject to a background check as a condition of employment during
6 the application phase.

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

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

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

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

28 128. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a

1 condition of employment, DEFENDANTS violated Labor Code section 432.5.

2 Unlawful Inquires into Criminal History

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

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

12 Unlawful PAGA Waiver

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

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

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

27 134. Upon information and belief, DEFENDANTS required some Aggrieved Employees
28 to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By

1 requiring some Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver,
2 DEFENDANTS required written agreement to an unlawful provision as a condition of employment
3 which is a violation of labor code section 432.5.

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

14 136. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
15 engaged in these same herein described unlawful practices, which led to violations of the California
16 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
17 unlawful practices to all of its employees that it applied to PLAINTIFF.

18 **FIRST CAUSE OF ACTION**
19 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
20 **2698, ET SEQ.**
21 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
22 **Defendants)**

23 137. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

24 **Failure to Keep Accurate Records**

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

29 139. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
30 and complete records as required by law, including but not limited to the following records: total

1 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
2 Aggrieved Employees began and ended each work period, time records of meal periods, and
3 accurate itemized wage statements.

4 140. DEFENDANTS' failure to keep "accurate and complete" payroll records for
5 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
6 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
7 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
8 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
9 period during which the referenced statutes and Wage Order provisions were violated.¹

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

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

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

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

1 the employer. Lab. Code section 226(f).

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

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

15 **Meal Period Violations**

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

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

24 147. Employers covered by any and all applicable IWC Wage Orders have an obligation
25 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
26 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
27 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
28 ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing

1 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
2 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
3 provided”).

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

11 149. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
12 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
13 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
14 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
15 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
16 periods completely.

17 150. Based on information and belief, DEFENDANTS had and continue to have a policy
18 of rounding the start and end times of employees’ meal periods and/or automatically deducting thirty
19 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
20 Aggrieved Employees did not receive compliant meal periods.

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

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

27 153. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
28 periods in violation of California law and/or failed to pay the proper meal period premium for failure

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

4 154. These unlawful meal period policies and practices result in violations of Labor Code
5 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
6 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
7 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
8 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

9 **Rest Period Violations**

10 155. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
11 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
12 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
13 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
14 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
15 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
16 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
17 1029). The rest period requirement obligates employers to permit and authorize employees to take
18 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
19 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
20 257. If the employer fails to provide any required rest period, the employer must pay the employee
21 one hour of pay at the employee’s regular rate of compensation for each workday the employer did
22 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
23 applicable IWC Wage Order, §12(B).

24 156. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
25 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
26 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
27 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
28 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,

1 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
2 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
3 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
4 “onus is on the employer to clearly communicate the authorization and permission [to take rest
5 periods] to its employees.”).

6 157. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
7 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
8 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
9 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
10 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
11 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

28 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

19 **Minimum and Overtime Wage Violations**

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

27 167. California law also provides that employees in California must be paid overtime,
28 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per

1 week or 8 hours per day. *See* Labor Code 510 and the applicable Wage Order section 3. Employers
2 must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond
3 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh
4 consecutive day of work in a work week. *Ibid.*

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

12 169. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
13 Aggrieved Employees for all hours worked.

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

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

24 172. Based on information and belief, DEFENDANTS further violated California's
25 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
26 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
27 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
28 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of

1 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
2 other Aggrieved Employees.

3 173. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
4 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
5 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
6 Wage Orders, section 20.

7 **Statutory Wage Violations**

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

19 **Refusal to Make Payment**

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

1 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

2 **Standard Conditions of Labor Violations**

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

11 **Business Expense Violations**

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

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

26 _____
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).

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

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

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

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

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

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

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

25 **Wage Statement Violations**

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

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

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

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

25 189. As explained above, wage statements issued by DEFENDANTS failed to list the
26 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
27 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
28 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices

described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

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

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

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

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

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

197. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved Employees have suffered injury. The absence of accurate information on their wage statements has prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and mathematical computations to determine the amount of wages owed, and will cause difficulty and

1 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
2 submission of inaccurate information about wages and amounts deducted from wages to state and
3 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
4 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
5 and pay records than if DEFENDANT had complied with its legal obligations.

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

9 **Unlawful Deductions**

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

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

22 **Reporting Time Pay Violations**

23 201. Section 5 of all applicable IWC Wage Orders, provides as follows:

24 202. (A) Each workday an employee is required to report for work and does report, but is
25 not put to work or is furnished less than half said employee's usual or scheduled day's work, the
26 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
27 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less

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

1 than the minimum wage. (B) If an employee is required to report for work a second time in any one
2 workday and is furnished less than two (2) hours of work on the second reporting said employee
3 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
4 minimum wage.

5 203. Aggrieved Employees were not paid reporting time wages in accordance with
6 California law, including but not limited to the applicable IWC Wage Order. For example, based on
7 information and belief, at times, Aggrieved Employees reported to work for a scheduled shift but
8 were sent home and/or were not put to work and were not paid all owed reporting time pay wages
9 in accordance with California law.

10 204. Based on information and belief, DEFENDANTS have a policy and practice of
11 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
12 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
13 pay all reporting time wages to PLAINTIFF and Aggrieved Employees violated and continues to
14 violate the applicable Wage Order, and the California Labor Code, including but not limited to
15 section 1198.

16 **Violation of California Day of Rest Law**

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

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

27 **Seating Violations**

28 207. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be

1 provided with suitable seats when the nature of the work reasonably permits the use of seats and
2 when they are not actively engaged in the work duties that would not permit them to be seated.

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

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

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

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

14 210. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and
15 other Aggrieved Employees with suitable seating, and when such employees were not engaged in
16 duties which required them to stand, no seating was placed in reasonable proximity to their
17 workstations.

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

23 212. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
24 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
25 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
26 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
27 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
28 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each

1 Aggrieved Employee, results in a separate civil penalty.

2 **Sick Leave Violations**

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

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

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

19 216. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
20 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
21 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
22 were entitled to the maximum number of hours accruable.

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

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

1 219. On information and belief, PLAINTIFF alleges that all of these practices were
2 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

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

28 **Untimely Payment of Final Wages**

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

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

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

22 227. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
23 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
24 256.

25 **Violation of Labor Code Section 208**

26 228. Labor Code Section 208 provides: Every employee who is discharged shall be paid
27 at the place of discharge, and every employee who quits shall be paid at the office or agency of the
28 employer in the county where the employee has been performing labor. All payments shall be made

1 in the manner provided by law.

2 229. Based on information and belief, DEFENDANTS have a policy and practice of
3 failing to provide Aggrieved Employees and EXEMPT Aggrieved Employees who are terminated
4 with their final paychecks at the place of discharge and/or of failing to provide Aggrieved
5 Employees and/or EXEMPT Aggrieved Employees with their final paychecks at the office or
6 agency of DEFENDANTS in the county where the work was performed, in violation of Labor Code
7 Section 208.

8 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

1 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

19 Unlawful Inquires into Criminal History

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

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

1 239. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
2 Code section 432.7. By asking about convictions at the application phase or prior to extending an
3 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
4 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
5 disclose arrests and/or convictions as a condition of employment.

6 Unlawful PAGA Waiver

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

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

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

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

27 Failure to Provide a Safe and Healthful Workplace.

28 244. Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the

1 California Occupational Safety and Health Act ("Cal OSHA"), employers must maintain a safe and
2 healthful place of employment. Specifically, Labor Code section 6400, requires the following:

3 245. (a) Every employer shall furnish employment and a place of employment that is safe
4 and healthful for the employees therein...

5 246. Labor Code section 6401 provides as follows:

6 247. Every employer shall furnish and use safety devices and safeguards, and shall adopt
7 and use practices, means, methods, operations, and processes which are reasonably adequate to
8 render such employment and place of employment safe and healthful. Every employer shall do every
9 other thing reasonably necessary to protect the life, safety, and health of employees.

10 248. Labor Code section 6402 prohibits the following:

11 249. No employer shall require, or permit any employee to go or be in any employment
12 or place of employment which is not safe and healthful.

13 250. Similarly, Labor Code section 6404 provides as follows:

14 251. No employer shall occupy or maintain any place of employment that is not safe and
15 healthful.

16 252. In addition to the above, Labor Code section 6403 requires that employees provide
17 safety devices to its employees. Labor Code section 6403 states:

18 253. No employer shall fail or neglect to do any of the following:

19 254. (a) To provide and use safety devices and safeguards reasonably adequate to render
20 the employment and place of employment safe.

21 255. (b) To adopt and use methods and processes reasonably adequate to render the
22 employment and place of employment safe.

23 256. (c) To do every other thing reasonably necessary to protect the life, safety, and health
24 of employees.

25 257. Similarly, Labor Code section 6406(d) states the following:

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

28 259. Finally, Labor Code section 6407 provides:

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

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

7 262. At all relevant times, DEFENDANTS employed PLAINTIFF and Aggrieved
8 Employees subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times,
9 DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and
10 safeguards and of failing to adopt and use practices, means, methods, operations, and/or processes
11 which are reasonably adequate to render such employment and place of employment safe and
12 healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times
13 DEFENDANTS had and have a policy and practice of requiring or permitting employees to go or
14 be in in any employment or place of employment which is not safe and healthful, pursuant to Labor
15 Code section 6402. At all relevant times, DEFENDANTS had and have a policy and practice of
16 failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render
17 the employment and place of employment safe; adopt and use methods and processes reasonably
18 adequate to render the employment and place of employment safe; and do every other thing
19 reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code
20 section 6403.

21 263. PLAINTIFF is informed and believes and thereon alleges that these failures include,
22 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or
23 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to
24 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
25 conditions between PLAINTIFF and/or other Aggrieved Employees.

26 264. At all relevant times, DEFENDANTS had a policy and practice of failing to give
27 sufficient, adequate and proper notice to PLAINTIFF and/or other Aggrieved Employees of the
28 COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace

1 exposure from a qualifying individual as required by Labor Code section 6409.6. PLAINTIFF is
2 informed and believes that numerous employees contracted COVID-19 during the relevant time
3 periods, but that DEFENDANTS failed to provide notice to employees. Based on further
4 information and belief, DEFENDANTS do not or did not keep adequate records of written
5 notifications required in subdivision (a) for a period of at least three years.

6 265. At all relevant times, DEFENDANTS had and have a policy and practice of failing
7 within one business day after DEFENDANTS or a representative of DEFENDANTS received notice
8 of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other Aggrieved
9 Employees and/or their exclusive representatives, who were on the premises at the same worksite
10 as a qualifying individual who was within the infectious period that they may have been exposed to
11 COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and
12 practice of failing within one business day after DEFENDANTS or a representative of EMLOYER
13 received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other Aggrieved
14 Employees who were on the premises at the same worksite as the qualifying individual within the
15 infectious period and the exclusive representative, if any, with information regarding COVID-19-
16 related benefits to which the employee may be entitled under applicable federal, state or local laws,
17 including but not limited to, workers' compensation, and options for exposed employees, including
18 COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or
19 negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the
20 employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and
21 6432.

22 266. At all relevant times, DEFENDANTS had and have a policy and practice of failing
23 within one business day after DEFENDANTS or a representative of DEFENDANTS received a
24 notice of potential exposure to COVID-19 to notify PLAINTIFF and other Aggrieved Employees
25 who were on the premises at the same worksite as the qualifying individual within the infectious
26 period, and the employers of the subcontracted employees who were on the premises at the same
27 worksite as the qualifying individual within the infectious period and the exclusive representative,
28 if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of

1 the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per
2 the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated,
3 without limitation, Labor Code sections 6409.6 and 6432.

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

12 268. PLAINTIFF is informed and believes, and based thereon alleges that
13 DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and
14 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule
15 for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
16 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
17 blowers; and a sufficient number of toilets to be used by each of sex of employee.

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

25 270. Based on information and belief, DEFENDANTS failed to protect Aggrieved
26 Employees from exposure to COVID-19 due to, including but not limited to, failing to
27 maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address
28 hazards related to the COVID-19 virus.

1 271. As such, DEFENDANTS failed to comply with the occupational safety and health
2 standards, failed to do everything reasonably necessary to protect the health and safety of
3 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
4 necessary to maintain a safe and healthful workplace.

5 272. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
6 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
7 is subject to civil penalties.

8 273. Under the provisions of PAGA and the above mentioned Labor Code sections,
9 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
10 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
11 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, 6432 and all applicable
12 Wage Orders as well as all interpretations of these laws by California Courts and administrative
13 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
14 the following penalties:

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

24 274. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
25 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 the State of California, and all Aggrieved Employees:

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

Dated: September 18, 2023

CROSNER LEGAL, PC

By: 

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