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on behalf of the State of California
and all Aggrieved Employees

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Superior Court of California,
County of Solano
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO

EBONY HUGHES, on behalf of the State of
California and all Aggrieved Employees,

Plaintiff,

v.

NORTHBAY HEALTHCARE
CORPORATION, a California Non-Profit
Corporation; NORTHBAY HEALTH
ADVANTAGE, a California Non-Profit
Corporation; NORTHBAY HEALTHCARE
GROUP, a California Non-Profit
Corporation; NORTHBAY HEALTH
ADVANTAGE LLC a California Limited
Liability Company; NORTHBAY HEALTH
ADVANTAGE ASC, LLC, a California
Limited Liability Company; and DOES 1-
100, inclusive,

Defendants.

Case No.: CU24-01452

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

1 Plaintiff, EBONY HUGHES, (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants
3 NORTHBAY HEALTHCARE CORPORATION, a California Non-Profit Corporation;
4 NORTHBAY HEALTH ADVANTAGE, a California Non-Profit Corporation; NORTHBAY
5 HEALTHCARE GROUP, a California Non-Profit Corporation; NORTHBAY HEALTH
6 ADVANTAGE LLC a California Limited Liability Company; NORTHBAY HEALTH
7 ADVANTAGE ASC, LLC, a California Limited Liability Company; and DOES 1-100, inclusive,
8 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
9 thereon alleges as follows:

10 **INTRODUCTION**

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

16 **JURISDICTION AND VENUE**

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

19 3. Venue is proper in this judicial district and the County of Solano pursuant to
20 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within
21 this judicial district and conduct alleged by PLAINTIFF herein occurred in this this judicial district.
22 *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue
23 in a PAGA action is proper in any county where the defendants committed Labor Code violations
24 against some of its employees). Venue is also proper pursuant to section 393 of the California Code
25 of Civil Procedure because the cause, or some part of the cause, arose in the County of Solano.

26 **THE PARTIES**

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

1 5. PLAINTIFF is a current employee of DEFENDANTS. PLAINTIFF worked for
2 DEFENDANTS as a non-exempt employee with a job title(s) of video monitor technician, certified
3 nursing assistant, CNA and/or a similar job title(s) and/or job position(s) during the relevant period
4 beginning in or around 2019. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Fairfield
5 and Vacaville, California location(s).

6 6. Defendant NORTHBAY HEALTHCARE CORPORATION is a California Non-
7 Profit Corporation that, at all relevant times, was authorized to do business within the State of
8 California and is doing business in the State of California.

9 7. Defendant NORTHBAY HEALTH ADVANTAGE is a California Non-Profit
10 Corporation that, at all relevant times, was authorized to do business within the State of California
11 and is doing business in the State of California.

12 8. Defendant NORTHBAY HEALTHCARE GROUP is a California Non-Profit
13 Corporation that, at all relevant times, was authorized to do business within the State of California
14 and is doing business in the State of California.

15 9. Defendant NORTHBAY HEALTH ADVANTAGE LLC is a California Limited
16 Liability Company that, at all relevant times, was authorized to do business within the State of
17 California and is doing business in the State of California.

18 10. Defendant NORTHBAY HEALTH ADVANTAGE ASC, LLC is a California
19 Limited Liability Company that, at all relevant times, was authorized to do business within the State
20 of California and is doing business in the State of California.

21 11. DEFENDANTS own, operate, manage and/or staff its employees to work at the
22 medical centers, offices, hospitals, facilities and/or other location(s) in California, including but not
23 limited to the medical centers, offices, hospitals, facilities and/or other location(s) in Fairfield and
24 Vacaville, California. DEFENDANTS, through its various locations, serve the health care industry.

25 12. The true names and capacities of the DOE Defendants sued herein as DOES 1
26 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
27 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
28 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this

1 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
2 become known.

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

13 **JOINT LIABILITY**

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

1 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
2 employment,” *Id.* at 875 [emphasis added].

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

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

23 17. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
24 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
25 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
26 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees’
27 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
28 considered the joint employers of PLAINTIFF and Aggrieved Employees.

1 18. For example, based on information and belief, DEFENDANTS, and each of them,
2 maintain the same principal place of business and/or mailing address and/or agent for service of
3 process as provided to the California Secretary of State and/or the Secretary of State of the State of
4 Incorporation and/or maintain some of the same attorneys and/or human resources personnel to
5 oversee employment-related matters.

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

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

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

28 22. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS must

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

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

9 **PAGA ALLEGATIONS**

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

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

18 25. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
19 section 2699©, as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
20 limitations period and suffered one or more of the Labor Code violations set forth herein.
21 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
22 Employees, the civil penalties provided by PAGA, plus reasonable attor’ey’s fees and costs.
23 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
24 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by
25 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
26 Cal.Ap⁵th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
27 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
28 *Id.* at 760-761.

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

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

6 27. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
7 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
8 Employees.

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

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

18 **FACTUAL ALLEGATIONS**

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

23 31. PLAINTIFF is a current employee of DEFENDANTS. PLAINTIFFS worked for
24 DEFENDANTS as a non-exempt employee with a job title(s) of video monitor technician, certified
25 nursing assistant, CNA and/or a similar job title(s) and/or job position(s) from in or around 2019
26 through in or around the present. PLAINTIFF worked for DEFENDANTS at DEFENDANTS’
27 Fairfield and Vacaville, California location(s). PLAINTIFF regularly worked at least eight (8) to
28 eleven (11) hours per day, at least three (3) days.

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

3 33. PLAINTIFF was also compensated with non-discretionary bonuses/incentive pay
4 and/or other non-discretionary compensation.

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

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

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

22 37. For example, based on information and belief, DEFENDANTS have a policy and
23 practice of requiring Aggrieved Employees to perform off-the-clock work outside of scheduled shift
24 times and/or prior to clocking in for the start of their shifts and/or after clocking out for the end of
25 their shifts, resulting in the underpayment of wages owed to Aggrieved Employees.

26 38. For example, PLAINTIFF and other Aggrieved Employees were frequently if not
27 always required to wait in line behind other Aggrieved Employees to access DEFENDANTS' time-
28 keeping system and/or terminal so they could then clock in for the start of their shifts which said

1 waiting time spent under DEFENDANTS' control that was neither recorded nor compensated,
2 resulting in DEFENDANTS' failure to compensate PLAINTIFF and other Aggrieved Employees
3 for all time worked and the underpayment of minimum wages and overtime wages owed to
4 PLAINTIFF and other Aggrieved Employees.

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

13 40. Based on information and belief, Aggrieved Employees were required to be at their
14 respective workstations at their scheduled shift start time or face discipline. As such, Aggrieved
15 Employees typically arrived at work prior to their scheduled shift start times so that they could
16 perform any required pre-shift work, including but not limited to, bestow personal items in employee
17 lockers/storage area, retrieve and/or compile work tools/equipment, make any necessary
18 adjustments to tools/equipment and/or perform any required maintenance tasks, don work
19 clothing/uniforms and/or protective equipment, and/or complete other work tasks so as to be ready
20 to be at their respective work stations at the their scheduled shift start time as mandated by
21 DEFENDANTS. This pre-shift off-the-clock work was neither recorded nor compensated resulting
22 in the substantial underpayment of wages owed to Aggrieved Employees.

23 41. Based on information and belief, Aggrieved Employees were also required to
24 perform post-shift off-the-clock work that was neither recorded nor compensated.

25 42. For example, based on information and belief, Aggrieved Employees were required
26 to put away their work tools/equipment, provide shift debriefings/make/receive work-related
27 communications, change out of their work clothing/uniforms and/or protective gear after clocking
28 out for the end of their shifts, resulting in DEFENDANTS' failure to compensate Aggrieved

1 Employees for all time worked and the underpayment of minimum wages and overtime wages owed
2 to Aggrieved Employees.

3 43. Based on information and belief, DEFENDANTS did not compensate Aggrieved
4 Employees for time spent donning and doffing uniforms and/or personal protective equipment
5 and/or safety equipment (e.g., gloves and/or face masks and/or hair coverings and/or shoe coverings)
6 during meal periods, before the start of a scheduled shift, and after completing a scheduled shift,
7 resulting in off-the-clock work and the underpayment of wages owed to Aggrieved Employees.

8 44. Based on information and belief, DEFENDANTS required PLAINTIFF and other
9 Aggrieved Employees to obtain Covid-related testing outside of their scheduled shift times without
10 compensating them for the time spent completing DEFENDANTS' testing requirements.

11 45. Based on information and belief, DEFENDANTS performed an automatic deduction
12 for meal periods that were worked through, interrupted, cut short, and/or during which Aggrieved
13 Employees were not relieved of all duties and DEFENDANTS' control, resulting in
14 DEFENDANTS' failure to compensate Aggrieved Employees for all hours worked and the
15 underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

16 46. Based on information and belief, Aggrieved Employees were also pressured to
17 complete at least some of their work tasks off-the-clock in order to meet DEFENDANTS' goals and
18 expectations.

19 47. For example, based on information and belief, Aggrieved Employees were required
20 to complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-
21 related phone calls and/or messages they received to their phones and were required to respond to,
22 including but not limited to, communications from supervisors regarding scheduling and/or other
23 work tasks, resulting in the underpayment of wages owed to Aggrieved Employees.

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

28 49. Based on information and belief, at times, Aggrieved Employees were required after

1 working at their scheduled facility location to cover a shift and/or work a second shift at another of
2 DEFENDANTS' facilities/locations but were not compensated for the time spent driving and/or
3 traveling to the second facility and/or second location resulting in off-the-clock work and the
4 underpayment of wages owed to Aggrieved Employees.

5 50. Based on information and belief, DEFENDANTS' Kronos timekeeping software was
6 hacked in 2021 and DEFENDANTS failed to maintain accurate records of hours worked during pay
7 periods following the hack and/or during the hack and instead paid Aggrieved Employees based on
8 scheduled hours worked rather than actual hours worked and/or otherwise failed to pay for all hours
9 worked due to a failure to maintain accurate records of the total hours worked, leading to unpaid
10 minimum and overtime wages.

11 51. Based on information and belief, at times, Aggrieved Employees also were required
12 to perform off-the-clock work duties at home/remotely, such as but not limited to, completing
13 trainings/continued education courses and/or reviewing policies and/or other documents remotely
14 as mandated by DEFENDANTS. Moreover, based on information and belief, DEFENDANTS
15 failed to pay Aggrieved Employees split shift premium wages when they worked split shifts during
16 the relevant period.

17 52. For example, based on information and belief, at times, DEFENDANTS required
18 Aggrieved Employees to work two separate shifts in the same day.

19 53. Based on information and belief, DEFENDANTS failed to pay Aggrieved
20 Employees split shift compensation whenever PLAINTIFF's and/or other Aggrieved Employees'
21 work schedules were interrupted by non-paid non-working periods established by DEFENDANTS,
22 which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage
23 orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be
24 paid in addition to the minimum wage for that workday...). See, also, Cal. Code Regs. Tit. 8, §
25 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid
26 in addition to the minimum wage for that workday, except when the employee resides at the place
27 of employment). DEFENDANTS also failed to separately itemize these split shift premium wages
28 on PLAINTIFF's and/or other Aggrieved Employees' wage statements, in violation of Labor Code

1 sections 510, 1194 and all applicable IWC Wage Orders.
2 See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment
3 on the pay stub provided to the employee, and it should be shown as a separate category such as
4 “Split Shift Premium” and should not be lumped into another category such as wages, bonus, etc.
5 DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF
6 and/or other Aggrieved Employees on their wage statements. Based on information and belief,
7 DEFENDANTS failed to pay Aggrieved Employees split shift compensation whenever their work
8 schedules were interrupted by non-paid non-working periods established by DEFENDANTS, which
9 resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders,
10 “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in
11 addition to the minimum wage for that workday...).

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

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

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

27 57. Based on information and belief, DEFENDANTS had actual and/or constructive
28 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to

1 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
2 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation
3 of California's minimum and overtime wage laws.

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

8 59. DEFENDANTS failed to compensate Aggrieved Employees at an overtime at a rate
9 that was 1.5 times the regular rate due to either a failure to incorporate all non-discretionary
10 compensation into the regular rate and/or due to a failure to correctly calculate the owed overtime
11 rate.

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

17 61. For example, based on information and belief, DEFENDANTS compensated
18 PLAINTIFF with non-discretionary bonuses/incentive pay and/or other discretionary compensation
19 but did not factor all non-discretionary compensation into the regular rate(s) of pay for purposes of
20 calculating the owed overtime resulting in the miscalculation and underpayment of overtime wages
21 owed to PLAINTIFF, among other violations of the Labor Code described herein.

22 62. Additionally, DEFENDANTS also violated California's overtime laws as to those
23 Aggrieved Employees, that were subject to an Alternative Workweek Schedule (AWS).

24 63. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
25 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
26 and/or implemented in accordance with the requirements of California law and/or DEFENDANTS
27 failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws,
28 including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor

1 Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an
2 AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

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

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

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

1 66. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to
2 comply with the above procedures, and thus, failed to properly institute an alternative workweek for
3 the purpose of obtaining a lawful exemption from overtime premiums for its mandated alternative
4 workweek schedule. Based on information and belief, DEFENDANTS also failed to report the
5 results to the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the
6 purported election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage
7 Orders. This conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the
8 Applicable Wage Orders. These violations subject employer to civil penalties under Labor Code §§
9 558 and 2699, and All Applicable Wage Orders. Each violation of each Labor Code section and
10 Wage Order provision results in a separate civil penalty, for each Aggrieved Employee, for each
11 pay period during which the referenced statutes and Wage Order provisions were violated.

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

1 68. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
2 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
3 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
4 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
5 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
6 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
7 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
8 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
9 completely.

10 69. For example, based on information and belief, Aggrieved Employees were forced to
11 take late meal periods in order to complete assigned job duties.

12 70. Based on information and belief, Aggrieved Employees were at times interrupted
13 during purported meal periods and/or had meal periods cut short and/or restricted to
14 DEFENDANTS' premises due to the need to continue assigned job duties.

15 71. For example, at times, PLAINTIFF was forced to take interrupted and/or shortened
16 meal periods and/or was forced to take her meal period late (i.e. after the fifth hour of work) due to
17 the need to complete assigned job duties.

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

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

26 74. Based on information and belief, DEFENDANTS required Aggrieved Employees to
27 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
28 into account when scheduling meal periods for Aggrieved Employees. Based on information and

1 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

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

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

10 77. For example, when PLAINTIFF worked more than ten (10) and/or twelve (12) hours
11 in a shift, PLAINTIFF was not provided with any version of a second meal period.

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

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

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

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

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

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

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

13 84. Based on information and belief, DEFENDANTS did not have a have a compliant
14 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
15 practice.

16 85. For example, based on information and belief, Aggrieved Employees were at times,
17 unable to take compliant rest periods due to their need to complete assigned job duties and/or were
18 unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods
19 restricted to DEFENDANTS' premises.

20 86. For example, PLAINTIFF was frequently required to work through part and/or all of
21 her owed rest periods each shift due to the need to complete assigned job duties.

22 87. Also, per DEFENDANTS' unlawful rest period policy and practice, PLAINTIFF and
23 other Aggrieved Employees were restricted to the worksite premises during any rest periods and as
24 such, PLAINTIFF and other Aggrieved Employees were not relieved of all duties and
25 DEFENDANTS' control during any rest periods, in violation of California rest period law.

26 88. Based on information and belief, DEFENDANTS failed to authorize and permit rest
27 periods that were a "net" ten minutes in a suitable rest area, and instead, to the extent rest periods
28 were provided, DEFENDANTS limited PLAINTIFF and other Aggrieved Employees to only ten-

1 minute rest periods, requiring them to be back at their workstations within ten minutes of leaving,
2 in violation of California rest period law.

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

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

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

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

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

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

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

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

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

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

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

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

28 100. Based on information and belief, wage statements issued by DEFENDANTS failed

1 to list all applicable hourly rates in effect during the pay period and the corresponding number of
2 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
3 Code section 226(a)(9).

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

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

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

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

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

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

27 107. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
28 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as

1 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
2 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
3 required by law, including but not limited to the following records: total daily hours worked,
4 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
5 began and ended each work period, time records of meal periods, and accurate itemized wage
6 statements.

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

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

19 110. Based on information and belief, DEFENDANTS shifted the costs of doing business
20 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
21 to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of Aggrieved
22 Employees' personal cell phones/mobile devices, internet and/or data usage for work related
23 purposes, including but not limited to, to receive and respond to work related messages and/or phone
24 calls.

25 111. For example, based on information and belief, Aggrieved Employees were required
26 to receive and respond to work-related calls and/or messages from including but not limited to
27 supervisors and/or other Aggrieved Employees regarding scheduling and/or other work tasks and/or
28 were required to download and use work-related applications on their personal cell phones/mobile

1 devices but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

2 112. For example, PLAINTIFF was required to download and use work-related
3 applications on her personal cell phone/mobile device, including but not limited to, Covid-testing-
4 related applications and/or other applications as required by DEFENDANTS, however,
5 DEFENDANTS did not reimburse PLAINTIFF for these business expenses.

6 113. Based on information and belief, DEFENDANTS failed to reimburse Aggrieved
7 Employees for expenses associated with having to purchase and/or maintain their own
8 uniforms/work clothing/work shoes/personal protective/safety gear and/or hand tools and/or
9 equipment required to perform their assigned job duties.

10 114. For example, PLAINTIFF was required to purchase and maintain scrubs as well as
11 non-slip shoes DEFENDANTS required for work, but DEFENDANTS did not provide PLAINTIFF
12 with any and/or full reimbursement for these business expenses.

13 115. Based on information and belief, at times, Aggrieved Employees were not
14 reimbursed for the business use of their personal vehicles, including mileage, wear and tear and/or
15 cost of fuel when they were required to drive between DEFENDANTS' facilities/job sites, and/or
16 otherwise use their personal vehicles in carrying out the duties assigned by DEFENDANTS. As
17 such, DEFENDANTS failed to compensate Aggrieved Employees at the legally mandated Internal
18 Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

19 116. Based on information and belief, DEFENDANTS required Aggrieved Employees to
20 work remotely, including but not limited to, from their homes. As a result of working from home,
21 Aggrieved Employees were required to use their home internet, electricity, and other utilities in the
22 discharge of their job duties. Based on information and belief, DEFENDANTS lacked and continue
23 to lack a policy to reimburse employees who regularly increased utility expenses as a result of
24 working from home. Aggrieved Employees increased utility and internet expenses were expenses
25 for which DEFENDANTS were required to reimburse Aggrieved Employees a reasonable
26 percentage based on their required business use because said expenses were necessarily incurred by
27 Aggrieved Employees as a direct consequence of the discharge of their duties of employment.
28 However, DEFENDANTS failed to reimburse Aggrieved Employees for these business expenses

1 incurred as a result of being required to work from their homes, in violation of California law.

2 117. Based on information and belief, DEFENDANTS fail and continue to fail to
3 reimburse Aggrieved Employees for expenses Aggrieved Employees incurred in connection with
4 DEFENDANTS' mandated testing and/or licensing requirements, and/or expenses incurred in
5 obtaining certifications and/or re-certifications as required by DEFENDANTS.

6 118. As explained above, based on information and belief, Aggrieved Employees were
7 not reimbursed for the cost of using their personal phone for work related purposes and/or the cost
8 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
9 protective/safety gear.

10 119. Based on information and belief, DEFENDANTS regularly failed to reimburse and
11 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
12 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
13 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
14 assigned by DEFENDANTS.

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

19 121. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
20 provides as follows:

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

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

6 124. Based on information and belief, DEFENDANTS have a policy and practice of
7 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
8 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
9 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
10 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **141.** Based on further information and belief, DEFENDANTS failed to timely provide all
19 owed wages immediately upon discharge of employment. Based in information and belief, at times,
20 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
21 Aggrieved Employees would not be called in for work for longer than a single pay period due to
22 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
23 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
24 the end of such periods of employment, in violation of including but not limited to Labor Code
25 section 201-202.

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

1 performing labor. All payments shall be made in the manner provided by law.

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

7 144. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

8 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

1 the application phase.

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

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

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

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

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

25 Unlawful Inquires into Criminal History

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

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

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

7 Unlawful PAGA Waiver

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

11 156. 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.”)

17 157. 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.’”)

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

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

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

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

9 160. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 **Failure to Keep Accurate Records**

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

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

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

26 **Meal Period Violations**

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

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

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

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

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

24 168. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
25 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
26 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
27 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
28 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal

1 periods completely.

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

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

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

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

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

22 **Rest Period Violations**

23 174. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
24 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
25 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
26 "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
27 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
28 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to

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

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

19 176. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
20 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
21 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
22 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
23 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
24 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

25 177. Based on information and belief, DEFENDANTS implemented policies and/or
26 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
27 employer control during rest periods. Based on further information and belief, Aggrieved
28 Employees were pressured to complete their work duties according to a designated schedule such

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

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

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

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

13 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

4 **Minimum and Overtime Wage Violations**

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

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

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

25 188. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
26 Aggrieved Employees for all hours worked.

27 189. Based on information and belief, DEFENDANTS had actual or constructive
28 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for

1 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and
2 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
3 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
4 Employees.

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

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

16 192. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
17 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
18 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
19 Wage Orders, section 20.

20 **Statutory Wage Violations**

21 193. California Labor Code section 223 makes it unlawful for an employer to secretly pay
22 wages lower than required by statute while purporting to pay legal wages. As described above,
23 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
24 earned minimum and overtime compensation for all hours worked which resulted in the payment of
25 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
26 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
27 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
28 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and

1 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
2 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
3 Labor Code § 2699(f)-(g).

4 **Refusal to Make Payment**

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

13 **Standard Conditions of Labor Violations**

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

22 **Violation of Labor Code Section 208**

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

26 _____
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 in the manner provided by law.

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

7 **Business Expense Violations**

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

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

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

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

28 202. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
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PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

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

7 204. 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.

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

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

18 **Wage Statement Violations**

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

28 208. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees

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

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

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

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

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

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

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

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

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

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

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

27 219. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
28 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period

1 during which the statute provisions were violated.³

2 **Unlawful Deductions**

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

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

15 **Reporting Time Pay Violations**

16 222. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

25 224. Aggrieved Employees were not paid reporting time wages in accordance with
26 California law, including but not limited to the applicable IWC Wage Order. For example, based on
27 information and belief, at times, PLAINTIFF and/or other Aggrieved Employees reported to work

28 ³ Labor Code § 226.3 (establishing that the civil penalty is \$100 per employee per violation”).

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

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

8 **Violation of California Day of Rest Law**

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

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

19 **Seating Violations**

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

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

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

26 (B) When employees are not engaged in the active duties of their employment and the
27 nature of the work requires standing, an adequate number of suitable seats shall be placed in
28

1 reasonable proximity to the work area and employees shall be permitted to use such seats when it
2 does not interfere with the performance of their duties.

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

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

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

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

22 **Sick Leave Violations**

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

1 compensation into the sick leave pay rate calculation.

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

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

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

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

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

21 240. On information and belief, PLAINTIFF alleges that all of these practices were
22 experienced and continue to be experienced by other Aggrieved Employees.

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

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

27 242. Labor Code § 248.2 provides that all employers with 26 or more employees are
28 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental

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

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

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

13 244. Based on information and belief, DEFENDANTS had and continue to have a
14 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
15 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
16 to Aggrieved Employees upon separation of employment, in violation of California law, including
17 but not limited to, Labor Code section 227.3.

18 **Untimely Payment of Final Wages**

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

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

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

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

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

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

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

23 250. The California Labor Code places certain procedural and substantive limits on an
24 employers’ ability to conduct employee background checks and on how employers can use the
25 information they obtain through those background checks. Labor Code section 1024.5 states that
26 employers, except for financial institutions, may order a credit check only if the individual works
27 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
28 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies

1 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
2 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
3 background check, including but not limited to identifying an appropriate reason for the background
4 check, a separate consent form with required disclosures and certain formatting requirements,
5 additional forms such as a summary of rights, a way by which to request a copy of the report, as
6 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

24 Unlawful Inquires into Criminal History

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

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

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

11 Unlawful PAGA Waiver

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

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

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

26 262. Upon information and belief, DEFENDANTS required Aggrieved Employees to
27 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
28 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS

1 required written agreement to an unlawful provision as a condition of employment which is a
2 violation of labor code section 432.5.

3 263. Under the provisions of PAGA and the above mentioned Labor Code sections,
4 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
5 226.7, 227.3, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1194,
6 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as
7 well as all interpretations of these laws by California Courts and administrative bodies, as well as
8 any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
9 penalties:

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

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

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1 **PRAYER FOR RELIEF**

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

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

11
12 Dated: February 29, 2024

CROSNER LEGAL, PC

13
14 By: 

15 Jamie Serb, Esq.
16 Nikki Trenner, Esq.
17 Zachary M. Crosner, Esq.
18 Attorneys for Plaintiff
19 EBONY HUGHES
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