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

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF RIVERSIDE**

12 GUADALUPE BRISENO, on behalf of the
State of California, and others similarly
13 situated and aggrieved,

14 Plaintiff,

15 v.

16
17 PERFECTION PET FOODS, LLC, a
California Limited Liability Company;
18 VOLT INFORMATION SCIENCES, INC.,
a New York Corporation; VOLT
19 MANAGEMENT CORP., a Delaware
Corporation; and DOES 1-100, inclusive,

20 Defendants.
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Case No.: **CVRI2306029**

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

1 Plaintiff, GUADALUPE BRISENO, (“PLAINTIFF”), an individual on behalf of
2 PLAINTIFF, the State of California, and all other Aggrieved Employees (as defined below), hereby
3 files this Complaint against Defendants PERFECTION PET FOODS, LLC, a California Limited
4 Liability Company; VOLT INFORMATION SCIENCES, INC., a New York Corporation; VOLT
5 MANAGEMENT CORP., a Delaware Corporation; and DOES 1-100, inclusive, (collectively
6 referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges
7 as follows:

8 **INTRODUCTION**

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

14 **JURISDICTION AND VENUE**

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

17 3. Venue is proper in the County of Riverside pursuant to sections 395 and 395.5 of the
18 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business,
19 Defendant VOLT INFORMATION SCIENCES, INC. and/or Defendant VOLT MANAGEMENT
20 CORP. operate business locations within this judicial district, and conduct alleged by PLAINTIFF
21 herein occurred in this judicial district. See also *Crestwood Behavioral Health, Inc. v. Superior*
22 *Court* (2021) 60 Cal. App. 5th 1069 (venue in a PAGA action is proper in any county where the
23 defendants committed Labor Code violations against some of its employees). Venue is also proper
24 pursuant to section 393 of the California Code of Civil Procedure because the cause, or some part
25 of the cause, arose in the County of Riverside.

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 former employee of DEFENDANTS. PLAINTIFF worked for
2 DEFENDANTS as a non-exempt employee with a job title of packer and/or a similar title(s) and/or
3 position(s) from in or around March 2023 through in or around May 2023. PLAINTIFF worked for
4 DEFENDANTS at DEFENDANTS' Visalia, California location(s).

5 6. Defendant PERFECTION PET FOODS, LLC, is a California Limited Liability
6 Company that, at all relevant times, was authorized to do business within the State of California and
7 is doing business in the State of California.

8 7. Defendant VOLT INFORMATION SCIENCES, INC. is a New York Corporation
9 that, at all relevant times, was authorized to do business within the State of California and is doing
10 business in the State of California.

11 8. Defendant VOLT MANAGEMENT CORP. is a Delaware Corporation that, at all
12 relevant times, was authorized to do business within the State of California and is doing business in
13 the State of California.

14 9. DEFENDANTS own, operate, manage and/or staff its employees to work at the
15 warehouses, manufacturing facilities and/or other facilities and/or other location(s) in California,
16 including but not limited to the warehouses, manufacturing facilities and/or other facilities in
17 Visalia, California. DEFENDANTS, through its various locations, serve, including but not limited
18 to, the manufacturing industry.

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

25 11. PLAINTIFF is further informed and believes that, at all relevant times, each
26 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
27 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
28 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of

1 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
2 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
3 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
4 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
5 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
6 controlled, aided and abetted the conduct of all other Defendants.

7 **JOINT LIABILITY**

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

25 13. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and other
26 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of
27 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
28 Supreme Court in *Martinez, supra*. As discussed below, these DEFENDANTS (1) exercised control

1 over wages, hours and working conditions of PLAINTIFF and the Aggrieved Employees; (2)
2 suffered or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged
3 PLAINTIFF and Aggrieved Employees to work for them. PLAINTIFF is informed and believes,
4 and thereon alleges that at all relevant times DEFENDANTS operated as a single integrated
5 enterprise with common ownership and centralized human resources. As a result, DEFENDANTS
6 utilized the same unlawful policies and practices across all of their locations/facilities and subjected
7 all of the Aggrieved Employees to these same policies and practices regardless of the location(s)
8 where they worked.

9 14. Among other things, PLAINTIFF is informed and believes that: (1) there is common
10 ownership in, and financial control, in DEFENDANTS' companies, (2) DEFENDANTS utilize
11 common management, who have control over the day-to-day operations and employment matters,
12 including the power to hire and fire, set schedules, issue employee policies, and determine rates of
13 compensation across its locations in California; (3) DEFENDANTS utilize the same policies and
14 procedures for all California employees, including issuing the same employee handbooks and other
15 form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel
16 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.
17 PLAINTIFF is informed and believes, and thereon alleges that at all relevant times, DEFENDANTS
18 were the joint employers of PLAINTIFF and the Aggrieved Employees upon whose behalf
19 PLAINTIFF brings these allegations and causes of action, in that DEFENDANTS, exercised
20 sufficient control over PLAINTIFF and the Aggrieved Employees' wages, hours and working
21 conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved Employees to work so as
22 to be considered the joint employers of PLAINTIFF and the Aggrieved Employees. Upon
23 information and belief, PLAINTIFF alleges that DEFENDANTS created a uniform set of policies,
24 practices and/or procedures concerning, inter alia, hourly and overtime pay, time-keeping practices,
25 meal and rest periods, reimbursement of business expenses and other working conditions that were
26 distributed to, and/or applied to PLAINTIFF and the Aggrieved Employees, and further that
27 DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF and the
28 Aggrieved Employees in a uniform manner. DEFENDANTS collectively represented to

1 PLAINTIFF and the Aggrieved Employees that each was an "at-will" employee of DEFENDANTS,
2 and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's and Aggrieved
3 Employees' employment with or without cause. Upon information and belief, DEFENDANTS
4 further collectively represented to PLAINTIFF and Aggrieved Employees in writing the details of
5 their compensation, and the manner in which they were to take meal and rest periods, the procedures
6 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
7 to PLAINTIFF and Aggrieved Employees by which DEFENDANTS collectively would evaluate
8 the wage rates of PLAINTIFF and Aggrieved Employees.

9 15. Moreover, based on information and belief, Defendant VOLT INFORMATION
10 SCIENCES, INC. and Defendant VOLT MANAGEMENT CORP. (hereinafter collectively referred
11 to as "Volt") hired PLAINTIFF and entered into a written employment agreement with PLAINTIFF.
12 During PLAINTIFF's employment, Volt maintained control over many aspects of PLAINTIFF's
13 employment, including, among other things, having the authority to discipline PLAINTIFF, change
14 PLAINTIFF's job assignment, change PLAINTIFF's work hours, change PLAINTIFF's rates of pay,
15 and to terminate PLAINTIFF's employment. In addition, when PLAINTIFF was first hired, Volt
16 provided PLAINTIFF with orientation and training materials. Volt issued PLAINTIFF written
17 policies concerning meal periods, rest breaks, timekeeping, hours worked, and payment of
18 PLAINTIFF's wages, with which PLAINTIFF was required to comply. Based on information and
19 belief, among other things, these policies provided that PLAINTIFF's weekly time records be
20 submitted to Volt, and Volt was supposed to process PLAINTIFF's time records and pay
21 PLAINTIFF for all hours worked. Volt exercised ultimate control over the payment of PLAINTIFF's
22 wages, as Volt issued PLAINTIFF her paychecks. Finally, Volt directed PLAINTIFF to comply
23 with Perfection Pet Foods policies and directions. PLAINTIFF is informed and believes that Volt
24 exercised the same control over, applied the same policies and practices, and engaged in the same
25 acts and omissions with regard to the other class members.

26 16. Defendant PERFECTION PET FOODS, LLC (hereinafter "Perfection Pet Foods")
27 similarly suffered or permitted PLAINTIFF to work for them or engaged PLAINTIFF to work for
28 them. PLAINTIFF is informed and believes that Perfection Pet Foods entered into a written

1 agreement with Volt, pursuant to which Perfection Pet Foods paid Volt to provide it with workers,
2 including PLAINTIFF, to conduct Perfection Pet Foods business operations – namely, to work in
3 Perfection Pet Foods production/processing centers and/or administration offices. Perfection Pet
4 Foods suffered or permitted PLAINTIFF to work at Perfection Pet Foods and for the entirety of
5 PLAINTIFF's employment. Perfection Pet Foods further exercised control over PLAINTIFF's
6 wages, hours and working conditions. Perfection Pet Foods also: (1) set PLAINTIFF's work hours
7 and provided PLAINTIFF with PLAINTIFF's work schedule; (2) provided PLAINTIFF with
8 policies regarding meal periods and rest breaks, with which PLAINTIFF was required to comply;
9 (3) directly supervised PLAINTIFF's work through its employees; (4) assigned PLAINTIFF job
10 duties and trained PLAINTIFF on said job duties; (5) exercised authority to reprimand and counsel
11 PLAINTIFF regarding any work performance and other issues; (6) exercised authority to end
12 PLAINTIFF's work assignment at any time, which essentially equated to a termination of
13 employment as PLAINTIFF was not guaranteed any other job assignments; (7) required
14 PLAINTIFF to use its timekeeping system for purposes of recording time worked; (8) determined
15 whether and when PLAINTIFF would receive meal periods and rest breaks; (9) subjected
16 PLAINTIFF to unlawful schedules for taking meal periods and rest breaks; and, (10) was
17 responsible for recording when PLAINTIFF began and ended work shifts. Based on information
18 and belief, Perfection Pet Foods issued further written policies and practices and guidelines
19 governing PLAINTIFF's working conditions with which PLAINTIFF was required to comply.
20 PLAINTIFF is informed and believes that Perfection Pet Foods exercised the same control over,
21 applied the same policies and practices, and engaged in the same acts and omissions with regard to
22 the other Aggrieved Employees.

23 17. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
24 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
25 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
26 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
27 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
28 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively

1 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of
2 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
3 and other Aggrieved Employees' employment with or without cause. Upon information and belief,
4 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
5 writing the details of their compensation, and the manner in which they were to take meal and rest
6 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
7 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
8 collectively would evaluate their wage rates.

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

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

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

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

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

27 22. California Labor Code section 2810.3(b)(1) provides in pertinent part that "a client
28 employer shall share with the labor contractor" all civil liability for the payment of wages to the

workers supplied by the labor contractor.

23. Defendant VOLT INFORMATION SCIENCES, INC. is a “labor contractor” in that the business entity supplies PERFECTION PET FOODS, LLC, a client employer, with workers to perform labor within PERFECTION PET FOODS, LLC’s usual course of business. Lab. Code § 2810.3(a)(3).

24. Defendant VOLT MANAGEMENT CORP. is a “labor contractor” in that the business entity supplies PERFECTION PET FOODS, LLC, a client employer, with workers to perform labor within PERFECTION PET FOODS, LLC’s usual course of business. Lab. Code § 2810.3(a)(3).

25. PERFECTION PET FOODS, LLC is a “client employer” in that the business entity “obtains or is provided workers to perform labor within its usual course of business” from labor contractor VOLT INFORMATION SCIENCES, INC. and/or VOLT MANAGEMENT CORP. Lab. Code § 2810.3(a)(1)(A). Moreover, PERFECTION PET FOODS, LLC has a workforce of more than twenty-five workers and is supplied with at least five workers from a labor contractor at any given time. Lab. Code § 2810.3(a)(1)(B).

26. Under Section 2810.3, DEFENDANTS thus share all civil liability for the payment of wages to all workers supplied to PERFECTION PET FOODS, LLC by VOLT INFORMATION SCIENCES, INC. and/or VOLT MANAGEMENT CORP.

27. PLAINTIFF complied with all administrative requirements by providing notice by certified mail of the claims alleged herein to PERFECTION PET FOODS, LLC Lab. Code § 2810.3(d).

28. Any reference herein to any alleged act or omission by any DEFENDANT shall be deemed also to mean the same alleged act or omission by every other DEFENDANT, acting jointly and severally.

PAGA ALLEGATIONS

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

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

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

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

18 31. PLAINTIFF, on August 30, 2023, through counsel, gave written notice by online
19 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
20 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
21 in this Complaint (“PAGA Notice”).

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

25 33. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
26 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
27 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
28 PLAINTIFF has exhausted the administrative remedies as required by Labor Code section 2699.3.

1 Consequently, PLAINTIFF's right to file the instant lawsuit has duly accrued.

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

5 **FACTUAL ALLEGATIONS**

6 35. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees,
7 worked for DEFENDANTS in the State of California. At all times referenced herein,
8 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
9 permitted them to work.

10 36. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
11 DEFENDANTS as a non-exempt employee with a job title of packer and/or a similar title(s) and/or
12 position(s) from in or around March 2023 through in or around May 2023. PLAINTIFF worked for
13 DEFENDANTS at DEFENDANTS' Visalia, California location(s).

14 37. PLAINTIFF regularly worked at least approximately twelve (12) hours per day, at
15 least four (4) days per week.

16 38. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
17 DEFENDANTS as hours worked. Based on information and belief, PLAINTIFF and/or other
18 Aggrieved Employees were also compensated with non-discretionary bonuses/incentive pay and/or
19 shift differential pay and/or other non-discretionary compensation.

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

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

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

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

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

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

22 45. For example, upon arriving to work but prior to being able to clock in for the start of
23 their shifts, PLAINTIFF and other Aggrieved Employees were required to form a line in order to
24 access DEFENDANTS' timekeeping system / terminal, resulting in at least approximately two (2)
25 to three (3) minutes of preshift off-the-clock work and the underpayment of wages owed to
26 PLAINTIFF and other Aggrieved Employees.

27 46. Based on information and belief, Aggrieved Employees were required to complete
28 other off-the-clock work tasks after clocking out for the end of their shifts and/or during

1 uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum
2 and overtime wages owed to Aggrieved Employees.

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

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

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

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

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

1 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
2 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

3 52. Based on information and belief, Aggrieved Employees were also pressured to
4 complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals
5 and expectations.

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

12 54. Based on information and belief, DEFENDANTS failed to pay Aggrieved
13 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
14 Employee worked in California.

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

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

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

1 forty (40) hours in a week.

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

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

11 60. Based on information and belief, DEFENDANTS calculated the owed overtime
12 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
13 based on the minimum wage established for the cities and/or counties within which Aggrieved
14 Employees worked, resulting in the miscalculation and underpayment of overtime wages owed to
15 Aggrieved Employees who worked in cities and/or counties in California with minimum wage rates
16 above the California minimum wage rate.

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

22 62. For example, based on information and belief, PLAINTIFF and/or other Aggrieved
23 Employees earned non-discretionary bonuses/incentive pay and/or shift differential pay and/or other
24 non-discretionary compensation during pay periods in which they worked overtime, yet
25 DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate(s)
26 used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of
27 overtime wages owed to Aggrieved Employees.

28 63. Additionally, DEFENDANTS also violated California's overtime laws as to those

1 Aggrieved Employees that were subject to an Alternative Workweek Schedule (AWS).

2 64. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
3 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
4 and/or implemented in accordance with the requirements of California law and/or DEFENDANTS
5 failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws,
6 including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor
7 Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an
8 AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

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

1 noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the
2 alternative workweek schedule. An employer shall provide that disclosure in a non- English
3 language, as well as in English, if at least five (5) percent of the affected employees primarily speak
4 that non-English language. The employer shall mail the written disclosure to employees who do not
5 attend the meeting. Failure to comply with this paragraph shall make the election null and void. (4)
6 Any election to establish or repeal an alternative workweek schedule shall be held at the work site
7 of the affected employees. The employer shall bear the costs of conducting any election held
8 pursuant to this section. Upon a complaint by an affected employee, and after an investigation by
9 the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral
10 third party to conduct the election. (5) Any type of alternative workweek schedule that is authorized
11 by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3)
12 of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of
13 the affected employees shall be required to reverse the alternative workweek schedule. The election
14 to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is
15 submitted to the employer, except that the election shall be held not less than 12 months after the
16 date that the same group of employees voted in an election held to adopt or repeal an alternative
17 workweek schedule. The election shall take place during regular working hours at the employees'
18 work site. If the alternative workweek schedule is revoked, the employer shall comply within 60
19 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may
20 grant an extension of time for compliance. (6) Only secret ballots may be cast by affected employees
21 in the work unit at any election held pursuant to this section. The results of any election conducted
22 pursuant to this section shall be reported by the employer to the Office of Policy, Research and
23 Legislation within 30 days after the results are final, and the report of election results shall be a
24 public document. The report shall include the final tally of the vote, the size of the unit, and the
25 nature of the business of the employer. (7) Employees affected by a change in the work hours
26 resulting from the adoption of an alternative workweek schedule may not be required to work those
27 new work hours for at least 30 days after the announcement of the final results of the election. (8)
28

1 Employers shall not intimidate or coerce employees to vote either in support of or in opposition to
2 a proposed alternative workweek.

3 66. No employees shall be discharged or discriminated against for expressing opinions
4 concerning the alternative workweek election or for opposing or supporting its adoption or repeal.
5 However, nothing in this section shall prohibit an employer from expressing his/her position
6 concerning that alternative workweek to the affected employees. A violation of this paragraph shall
7 be subject to Labor Code § 98 *et seq.*

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

19 68. Moreover, to the extent there was an AWS that was properly adopted,
20 DEFENDANTS violated California's overtime laws as to Aggrieved Employees that were subject
21 to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the
22 agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee
23 to work fewer hours than those that are regularly scheduled by the agreement, the employer shall
24 pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's
25 regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is
26 required to work the reduced hours." *See* Section 3 of all applicable Wage Orders.

27 69. Based on information and belief, at times during Aggrieved Employees' employment
28 by DEFENDANTS', Aggrieved Employees worked subject to an alternative work week schedule.

1 Based on information and belief, at times, Aggrieved Employees that were subject to an AWS, were
2 sent home early and/or worked less hours than those that were scheduled under the AWS. On such
3 shortened shifts, Aggrieved Employees were entitled to overtime pay at 1.5 times the regular rate of
4 pay after the first eight hours of work. Instead, DEFENDANTS paid Aggrieved Employees their
5 base rate(s) pay for all hours worked on the shortened shift(s) in violation of the alternative
6 workweek schedule, and in violation of California Labor Code section 510, the applicable Wage
7 Order, and Labor Code section 1198. As such, PLAINTIFF and other Aggrieved Employees that
8 were subject to an AWS were also deprived of all owed overtime wages when required to work
9 shortened shifts.

10 70. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
11 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
12 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
13 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
14 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
15 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
16 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
17 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
18 completely.

19 71. For example, based on information and belief, Aggrieved Employees were forced to
20 take late meal periods in order to complete assigned job duties. Based on information and belief,
21 Aggrieved Employees were at times interrupted during purported meal periods and/or had meal
22 periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned
23 job duties.

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

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

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

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

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

16 77. For example, at times, PLAINTIFF was forced to take her second meal period late,
17 cut her second meal period short and/or work through her second meal period completely due to the
18 need to complete assigned job duties.

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

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

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

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

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

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

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

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

27 86. Also, DEFENDANTS failed to authorize and/or provide any version of a third rest
28 period to Aggrieved Employees during shifts lasting longer than ten (10) hours.

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

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

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

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

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

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

24 93. DEFENDANTS' locations/facilities are generally similar in layout and design, and
25 there was, and continues to be, space that allows for a resting facility that employees may use to
26 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
27 Employees with a resting facility within DEFENDANTS' facilities/locations with reasonable or no
28 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a

1 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to
2 resting, including but not limited to leaning up against the wall, or search for facilities outside of
3 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
4 vehicles.

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

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

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

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

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

1 Code section 226(a)(9).

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

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

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

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

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

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

25 105. **Failure to Produce Employment Records.** Based on information and belief,
26 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
27 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
28 sections 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and belief,

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

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

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

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

25 109. Based on information and belief, DEFENDANTS shifted the costs of doing business
26 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
27 to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of Aggrieved
28 Employees' personal cell phones/mobile devices, internet and/or data usage for work-related

1 purposes, including but not limited to, to receive and respond to work-related messages and/or phone
2 calls.

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

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

11 112. For example, DEFENDANTS required PLAINTIFF to purchase steel-toe boots
12 and/or other uniforms/work clothing/shoes/boots without providing PLAINTIFF with any and/or
13 full reimbursement for the business expenses PLAINTIFF incurred in connection therewith.

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

20 114. As explained above, based on information and belief, Aggrieved Employees were
21 not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost
22 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
23 protective/safety gear.

24 115. Based on information and belief, DEFENDANTS regularly failed to reimburse and
25 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
26 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
27 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
28 assigned by DEFENDANTS.

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

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

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

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

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

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

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

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

17 124. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
18 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
19 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
20 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
21 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
22 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
23 used sick leave and the balance of paid sick leave.

24 125. Based on information and belief, throughout the relevant time period,
25 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
26 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
27 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
28 prior to their respective separations, for as on several occasions thereafter, he or she would have

1 been entitled to use the banked sick leave and earn appropriate compensation.

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

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

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

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

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

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

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

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

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

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

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

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

25 136. Upon separation of employment, Aggrieved Employees' final paychecks were not
26 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
27 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
28 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,

1 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
2 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate
3 including non-discretionary compensation, including but not limited to, shift differentials).

4 137. For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck
5 for at least approximately two (2) weeks following PLAINTIFF's date of termination, and
6 PLAINTIFF's late final paycheck was devoid of all wages owed, including without limitation, all
7 owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or
8 paid time off wages at the properly accrued rates, (including but not limited to, all owed vacation
9 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
10 limited to, any shift differential pays).

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

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

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

28 141. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

1 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

23 145. Based on information and belief, DEFENDANTS required Aggrieved Employees to
24 agree in writing to a background check which failed to abide by the requirements set forth in CA
25 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
26 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
27 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
28 the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,

1 failing to provide a way by which the individual could request a copy of the report, failing to disclose
2 the name, address, and telephone number of the third party preparing the report, and failing to
3 properly obtain authorization or consent to such a background check, and thus was an unlawful
4 background check.

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

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

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

16 149. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
17 condition of employment, DEFENDANTS violated Labor Code section 432.5.

18 Unlawful Inquires into Criminal History

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

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

28 Unlawful PAGA Waiver

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

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

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

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

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

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

157. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

1 **Failure to Keep Accurate Records**

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

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

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

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

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

24 162. Section (b) of Labor Code section 226 further requires employers to “afford current

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

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

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

18 164. Based on information and belief, DEFENDANTS fail to timely produce or make
19 available Aggrieved Employees’ personnel records and/or payroll records when requested pursuant
20 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
21 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

22 **Meal Period Violations**

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

28 166. Employers must also provide employees with a second duty-free, uninterrupted thirty

1 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
2 be provided before the end of the 10th hour of work. *Ibid.*

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

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

18 169. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
19 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
20 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
21 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
22 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
23 periods completely.

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

28 171. Moreover, based on information and belief, Aggrieved Employees did not receive a

1 timely, uninterrupted second meal period when working shifts over ten (10) hours in a workday.

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

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

11 174. These unlawful meal period policies and practices result in violations of Labor Code
12 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
13 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
14 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
15 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

16 **Rest Period Violations**

17 175. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
18 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
19 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
20 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
21 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
22 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
23 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
24 1029). The rest period requirement obligates employers to permit and authorize employees to take
25 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
26 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
27 257. If the employer fails to provide any required rest period, the employer must pay the employee
28 one hour of pay at the employee’s regular rate of compensation for each workday the employer did

1 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
2 applicable IWC Wage Order, §12(B).

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

13 177. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
14 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
15 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
16 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
17 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
18 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

26 180. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
27 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
28 was a missed or otherwise unlawful rest period. Based on further information and belief, when a

1 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
2 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
3 the regular rate of compensation for purposes of determining the owed rest period premium.

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

7 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

26 **Minimum and Overtime Wage Violations**

27 186. California law provides that employees in California must be paid for all hours
28 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less

1 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
2 The minimum wage standard applies to each hour employees worked for which they were not paid.
3 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
4 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
5 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

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

19 189. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
20 Aggrieved Employees for all hours worked.

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

27 191. Based on information and belief, DEFENDANTS failed and continue to fail to pay
28 a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours

1 in a week.

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

6 193. Based on information and belief, DEFENDANTS also violated California's overtime
7 laws as to those Aggrieved Employees that were subject to an AWS but were required to work a
8 short shift. Under Section(B)(2) of all applicable IWC Wage Orders, "[i]f an employer, whose
9 employees have adopted an alternative workweek agreement permitted by this order requires an
10 employee to work fewer hours than those that are regularly scheduled by the agreement, the
11 employer shall pay the employee overtime compensation at a rate of one and one-half times the
12 employee's regular rate of pay for all hours worked in excess of eight (8) hours, and double the
13 employee's regular rate of pay for all hours worked in excess of 12 hours for the day the employee
14 is required to work the reduced hours."

15 194. Based on information and belief, Aggrieved Employees that were subject to an AWS
16 worked a short shift on various diverse dates during the relevant period. On those shifts, Aggrieved
17 Employees were entitled to overtime wages at 1.5 times their regular rate of pay for all hours worked
18 over eight hours in the shortened shift. Instead, DEFENDANTS paid Aggrieved Employees at their
19 base rate for all hours worked on the shortened shift, in violation of California's overtime laws.

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

27 196. This conduct results in violations of Labor Code sections 218.5, 510, 511, 558, 558.1,
28 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS

1 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
2 Wage Orders, section 20.

3 **Statutory Wage Violations**

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

15 **Refusal to Make Payment**

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

24 **Standard Conditions of Labor Violations**

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

8 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

19 **Wage Statement Violations**

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

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

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

19 212. As explained above, wage statements issued by DEFENDANTS failed to list the
20 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
21 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
22 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
23 described above), which results in a violation of Labor Code section 226(a).

24 213. Separately, and independent of the above allegations, based on information and
25 belief, DEFENDANTS issued wage statements to Aggrieved Employees that failed to list the total
26 hours worked, in violation of including but not limited to, Labor Code section (a)(2).

27 214. Failure to list all hours worked on a wage statement, gives rise to an inference of
28 injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th

1 1308, 1337).

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

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

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

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

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

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

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

23 222. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
24 Employees have suffered injury. The absence of accurate information on their wage statements has
25 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
26 mathematical computations to determine the amount of wages owed, and will cause difficulty and
27 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
28 submission of inaccurate information about wages and amounts deducted from wages to state and

1 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
2 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
3 and pay records than if DEFENDANT had complied with its legal obligations.

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

7 **Unlawful Deductions**

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

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

20 **Reporting Time Pay Violations**

21 226. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

1 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
2 minimum wage.

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

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

13 **Violation of California Day of Rest Law**

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

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

24 **Seating Violations**

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

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

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

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

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

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

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

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

26 **Sick Leave Violations**

27 238. DEFENDANTS violated California's paid sick leave laws including, Labor Code
28 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to

1 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
2 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
3 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
4 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
5 compensation into the sick leave pay rate calculation.

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

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

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

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

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

25 244. On information and belief, PLAINTIFF alleges that all of these practices were
26 experienced and continue to be experienced by other Aggrieved Employees.

27 245. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
28 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and

1 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

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

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

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

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

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

22 **Untimely Payment of Final Wages**

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

1 to his or her wages at the time of quitting.”

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

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

14 252. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
15 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
16 256.

17 **Violation of Labor Code Section 208**

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

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

27 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

28 255. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall

1 require any employee or applicant for employment to agree, in writing, to any term or condition
2 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
3 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
4 conditions of employment including but not limited to unlawful non-solicitation/non-compete
5 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
6 waivers, including but not limited to unlawful meal period waivers, unlawful forum selection clauses
7 and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a
8 condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

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

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

28 259. Based on further information and belief, DEFENDANTS required Aggrieved

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

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

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

10 Unlawful Inquires into Criminal History

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

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

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

25 Unlawful PAGA Waiver

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

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

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

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

17 269. Under the provisions of PAGA and the above mentioned Labor Code sections,
18 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
19 226.7, 245-248.6, 256, 432, 432.5, 432.7, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
20 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as
21 all interpretations of these laws by California Courts and administrative bodies, as well as any other
22 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 23 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
24 relevant California Labor Code provisions listed herein only if permitted by the
25 PAGA statute, pursuant to Labor Code section 2699(a); and
26 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
27 violations without a civil penalty recoverable under the PAGA, all in the default
28 amounts provided by Labor Code section 2699(f).

1 c. The proper measure of penalties under PAGA is the number of violations,
2 whether those violations were committed as against PLAINTIFF or any
3 Aggrieved Employee, whether a party to this action or not.

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

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PRAYER FOR RELIEF

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

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

Dated: November 8, 2023

CROSNER LEGAL, PC

By: 

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GUADALUPE BRISENO