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

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF LOS ANGELES**

13 CHARLES KEOPIMPHA, on behalf of the
State of California, and others similarly
14 situated and aggrieved,

15 Plaintiff,

16 v.
17

18 SPACE EXPLORATION
TECHNOLOGIES CORP., a Delaware
19 Corporation; and DOES 1-100, inclusive,

20 Defendants.
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County of Los Angeles
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Executive Officer/Clerk of Court,
By Y. Tarasyuk, Deputy Clerk

Case No.: **23STCV26766**

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

1 Plaintiff CHARLES KEOPIMPHA (“PLAINTIFF”), an individual, on behalf of the State of
2 California and all other Aggrieved Employees (as defined below), hereby files this Complaint
3 against Defendants SPACE EXPLORATION TECHNOLOGIES CORP., a Delaware Corporation;
4 and DOES 1-100, inclusive, (collectively “DEFENDANTS”). PLAINTIFF is informed and believes
5 and thereon alleges as follows:

6 **INTRODUCTION**

7 1. This is a representative action filed by PLAINTIFF on behalf of the State of
8 California and other Aggrieved Employees against DEFENDANTS, pursuant to California’s Private
9 Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*, to recover civil penalties for
10 DEFENDANTS’ violations of the California Labor Code as alleged below.

11 2. PLAINTIFF and DEFENDANTS are parties to an arbitration agreement that requires
12 the arbitration of PLAINTIFF’S individual claims, and PLAINTIFF is pursuing his individual
13 claims separately in an arbitration proceeding.

14 **JURISDICTION AND VENUE**

15 3. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
16 California statute, including PAGA, and decisional law and regulations.

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

22 **THE PARTIES**

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

25 6. PLAINTIFF was employed by DEFENDANTS as a non-exempt Structures
26 Technician from approximately March 13, 2023, through August 4, 2023, at DEFENDANTS’
27 Hawthorne, California, location. PLAINTIFF regularly worked eight (8) to twelve (12) hours per
28 day, five (5) to six (6) days per week.

7. Defendant SPACE EXPLORATION TECHNOLOGIES CORP. is a Delaware Corporation that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California. DEFENDANTS' headquarters and principal place of business is located in Hawthorne, California.

8. DEFENDANTS own, operate, manage, and/or staff warehouses, manufacturing centers, offices, and/or other location(s) in California, including facility in Hawthorne, California. DEFENDANTS, through its various locations, serve the manufacturing industry, specializing in the manufacture of spacecraft and related provisions.

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

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

JOINT LIABILITY

11. Under California law, the phrase “to employ” is broadly construed under the applicable Wage Order(s) to have three alternative definitions: “(a) to exercise control over the wages, hours or working conditions; (b) to suffer or permit to work; or (c) to engage, thereby

1 creating a common law employment relationship.” *Martinez v. Combs*, 75 Cal. Comp. Cases 430,
2 452 (Cal. May 20, 2010). “Employer” is defined in terms of exercising control to reach situations
3 in which multiple entities control different aspects of the employment relationship, for example,
4 when one entity (such as a temporary employment agency) hires and pays a worker, and the other
5 entity supervises the work.” *Id.* at 463. Supervision of the work by exercising control over how
6 services are performed is as one of the Wage Orders’ “working conditions.” A joint employer
7 relationship may be established where “the employer ‘exercises enough control’ to ‘indirectly
8 dictate the wages, hours, or working conditions of the employee.’” *Mattison v. Loma Linda Univ.*
9 *Med. Ctr.*, No. EDCV 20-2334 JGB (SHKx), 2023 U.S. Dist. LEXIS 61850, at *36 (C.D. Cal. Apr.
10 6, 2023) (quoting *Medina v. Equilon Enterprises, LLC* (2021) 68 Cal. App. 5th 868, 879.).

11 12. As discussed below, and at all relevant times, DEFENDANTS either (1) exercised
12 control over wages, hours and working conditions of Aggrieved Employees; (2) suffered or
13 permitted Aggrieved Employees to work; and/or (3) engaged Aggrieved Employees to work.

14 13. PLAINTIFF is informed and believes, and thereon alleges that DEFENDANTS
15 operated at all relevant times as a single integrated enterprise with common ownership and
16 centralized human resources. DEFENDANTS thus utilized the same policies and practices at all of
17 their locations and all Aggrieved Employees were, and are, subject to these same policies and
18 practices regardless of where they worked in California. Among other things, PLAINTIFF is
19 informed and believes that: (1) DEFENDANTS share common ownership in, and financial control
20 over, all locations where Aggrieved Employees are employed, (2) DEFENDANTS share
21 management personnel who exercise, or have the right to exercise, control over day-to-day
22 operations and employment matters, including the power to hire and fire, set schedules, issue
23 policies, and determine rates of compensation for all Aggrieved Employees; (3) Aggrieved
24 Employees employed by DEFENDANTS are subject to the same uniform policies and procedures,
25 including the same employee handbooks and other form agreements; (4) DEFENDANTS share
26 Human Resources personnel and legal counsel to oversee matters related to non-exempt employees;
27 and, (6) DEFENDANTS share employees and/or transfer employees between DEFENDANTS’
28 California locations.

14. PLAINTIFF is informed and believes, and thereon alleges, that, at all relevant times, DEFENDANTS suffered or permitted PLAINTIFF and Aggrieved Employees to work and/or exercised control over Aggrieved Employees' wages, hours, and working conditions sufficient to make them joint employers of Aggrieved Employees.

15. On information and belief, PLAINTIFF alleges that DEFENDANTS created a uniform set of policies, practices and/or procedures for working conditions, including rates of pay, time-keeping, meal and rest periods, and reimbursement of business expenses, that were distributed and/or applied uniformly to Aggrieved Employees., On further information and belief, PLAINTIFF alleges that DEFENDANTS compensated, and controlled the wages of, Aggrieved Employees in a uniform manner, that DEFENDANTS collectively represented to Aggrieved Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS collectively retained and reserved the right to terminate Aggrieved Employees' employment with or without cause. On information and belief, DEFENDANTS also represented in writing to Aggrieved Employees the details of their compensation and DEFENDANT'S policies and practices related to meal and rest periods, timekeeping, and payroll.

16. DEFENDANTS thus exercised, or had the right to exercise, the same right(s) to control the wages, hours, and working conditions of Aggrieved Employees. As such, DEFENDANTS jointly exercised, or held the right to exercise, control over virtually every aspect of Aggrieved Employees' employment.

17. PLAINTIFF is informed and believes, and thereon alleges, that DEEFENDANTS are joint employers that either engaged and suffered and/or permitted Aggrieved Employees to perform tasks from which DEFENDANTS benefited or exercised, or had the right to exercise, control over Aggrieved Employees' wages, hours, and/or working conditions at all relevant times.

18. DEFENDANTS are jointly and severally liable for civil penalties as to all Aggrieved Employees.

PAGA ALLEGATIONS

19. PLAINTIFF brings this representative action under PAGA, on behalf of the State of California and all other Aggrieved Employees for the Labor Code violations alleged herein as to all

1 Aggrieved Employees. Said “Aggrieved Employees” include:

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

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

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

17 21. On August 17, 2023, PLAINTIFF provided written notice by online filing to the
18 California Labor and Workforce Development Agency (“LWDA”) and by certified mail to
19 DEFENDANTS of the specific provisions of the California Labor Code alleged to have been
20 violated, including facts and theories to support the alleged violations (“PAGA Notice”), in
21 accordance with Labor Code § 2699.3, Case No. LWDA-CM-975875-23.

22 22. 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 23. The LWDA did not provide notice of its intention to investigate within the statutory
26 waiting period, or at any time. In addition, to the extent any of the alleged violations were curable,
27 DEFENDANTS failed to cure within the time allowed under PAGA. PLAINTIFF has thus
28 exhausted the administrative remedies as required by Labor Code § 2699.3, and PLAINTIFF’s right

1 to file the instant lawsuit has duly accrued.

2 24. PLAINTIFF seeks to recover the PAGA civil penalties through this representative,
3 and certification of a class of Aggrieved Employees is not required. *Arias v. Superior Court* (2009)
4 46 Cal.4th 969.

5 **FACTUAL ALLEGATIONS**

6 25. At all relevant times, every Aggrieved Employee worked for DEFENDANTS in the
7 State of California, and DEFENDANTS exercised control over and suffered and/or permitted all
8 Aggrieved Employees to work.

9 26. As noted above, DEFENDANTS' employed PLAINTIFF as a non-exempt Structures
10 Technician from approximately March 13, 2023, through August 4, 2023, at DEFENDANTS'
11 Hawthorne, California, location. PLAINTIFF regularly worked eight (8) to twelve (12) hours per
12 day, five (5) to six (6) days per week. PLAINTIFF was paid a base hourly rate of approximately
13 \$27.00, plus a shift differential of approximately \$2.29 per hour for the Split Shift / Night Shift. On
14 information and belief, in addition to other forms of compensation, all Aggrieved Employees were
15 entitled to non-discretionary remuneration.

16 27. **Unpaid Minimum and Overtime Wages.** On information and belief,
17 DEFENDANTS failed to compensate Aggrieved Employees for all hours worked because not all
18 hours were recorded, which resulted in the underpayment of minimum and overtime wages earned
19 and owed.

20 28. On information and belief, though DEFENDANTS knew or should have known that
21 Aggrieved Employees were subject to DEFENDANTS' control during purported meal periods
22 and/or were otherwise not afforded full and complete duty-free meal periods. For example,
23 DEFENDANTS had a policy and/or practice of scheduling non-exempt employees' meal periods
24 but failing to inform Aggrieved Employees that such meal periods had to be duty-free for a full,
25 consecutive thirty (30) minutes and taken within the employee's first five (5) hours of work. On
26 information and belief, DEFENDANTS also failed to inform Aggrieved Employees of their right to
27 take a second duty-free 30-minute meal period after ten (10) hours of work.

28 29. DEFENDANTS' failure to compensate Aggrieved Employees for all hours worked

1 was the result of such DEFENDANTS' uniform timekeeping policies and practices, and the
2 underpayment included not only minimum wages, but also overtime wages when Aggrieved
3 Employees worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

4 30. On information and belief, DEFENDANTS knew or should have known that their
5 timekeeping policies and practices resulted in the underpayment of minimum and/or overtime wages
6 owed to Aggrieved Employees, in violation of California law.

7 31. On information and belief, DEFENDANTS failed correctly to calculate the overtime
8 rate of pay when Aggrieved Employees worked more than eight (8) hours in a workday or forty (40)
9 hours in a workweek, in violation of California law.

10 32. On information and belief, DEFENDANTS failed to incorporate all non-
11 discretionary remuneration in its regular rate calculations, including shift differentials and non-
12 discretionary bonuses, which miscalculation resulted in the underpayment of overtime wages earned
13 and owed.

14 33. **Meal Period Violations.** Aggrieved Employees consistently worked shifts longer
15 than five (5) hours, entitling them to at least one 30-minute, duty-free meal period per shift.
16 However, on information and belief, Aggrieved Employees were not always provided the
17 opportunity to take all timely, complete, and duty-free 30-minute, meal periods to which they were
18 entitled due to the need to meet productivity goals and expectations.

19 34. On information and belief, Aggrieved Employees were not relieved of all duties
20 and/or DEFENDANTS' control during unpaid meal periods as a result of DEFENDANTS' uniform
21 policies and practices, and Aggrieved Employees were consistently suffered and permitted to take
22 meal periods past the fifth hour of work and/or work through meal periods due to the need to meet
23 productivity goals and expectations.

24 35. On information and belief, Aggrieved Employees were sometimes required to wait
25 in line before clocking in for scheduled shifts, which DEFENDANTS failed to take into account
26 when scheduling meal periods and which resulted in meal periods started after the fifth hour of
27 work.

28 36. On information and belief, though DEFENDANTS knew or should have known of

1 the omission, Aggrieved Employees were not provided the opportunity to take a second (2nd) full
2 and complete 30-minute meal period when they worked more than ten (10) hours in a workday.

3 37. On information and belief, DEFENDANTS did not have a compliant written meal
4 period policy and/or a compliant meal period practice.

5 38. On information and belief, DEFENDANTS knew or should have known that, as a
6 result of their policies and practices, Aggrieved Employees were not always provided the
7 opportunity to take the timely, full and complete duty-free meal periods to which they were entitled,
8 in violation of California law.

9 39. DEFENDANTS also failed to pay Aggrieved Employees an additional hour of pay
10 at the employee's regular rate of pay for each workday a lawful meal period was not provided.
11 DEFENDANTS either failed to pay any meal period premium for each such workday or failed to
12 pay the correct premium wage in lieu thereof, including by failing to incorporate all non-
13 discretionary remuneration in the regular rate calculation.

14 40. **Rest Period Violations.** Aggrieved Employees were not always provided the
15 opportunity to take a full and complete duty-free 10-minute rest period for every four (4) hours
16 worked or major fraction thereof, as required by California law.

17 41. On information and belief, DEFENDANTS did not have a compliant written rest
18 period policy and/or a compliant rest period policy in practice. For example, on information and
19 belief, Aggrieved Employees were usually not provided the opportunity to take a third (3rd) duty-
20 free rest period when he worked over ten (10) hours in a workday due to the need to meet production
21 goals and expectations.

22 42. DEFENDANTS also either failed to pay a rest period premium wage for each
23 workday Aggrieved Employees were not provided the opportunity to take a lawful rest period or
24 failed to pay the correct premium wages in lieu thereof by failing to incorporate all non-discretionary
25 remuneration in the regular rate calculation, in violation of California law.

26 43. **Failure to Provide Suitable Resting Facilities.** Section 13(B) of all applicable
27 Wage Orders states: "[s]uitable resting facilities shall be provided in an area separate from the toilet
28 rooms and shall be available to employees during work hours."

1 44. **Inaccurate Wage Statements.** At all relevant times, DEFENDANTS failed to
2 provide Aggrieved Employees with itemized wage statements that complied with Labor Code § 226.
3 For example, as a result of DEFENDANTS’ failure to provide Aggrieved Employees the
4 opportunity to take all meal and rest periods to which they’re entitled and/or calculate the regular
5 rate of pay correctly, DEFENDANTS’ wage statements failed correctly to set forth gross wages
6 earned, total hours worked, net wages earned, all applicable hourly rates in effect during the pay
7 period, and the corresponding number of hours worked at each hourly rate by the employee, in
8 violation of Labor Code section 226(a).

9 45. **Unlawful Deductions.** Labor Code § 221 prohibits an employer from “collect[ing]
10 or receiv[ing] from an employee any part of wages theretofore paid by said employer to said
11 employee.” On information and belief, DEFENDANTS made unlawful deductions from Aggrieved
12 Employees paychecks during the relevant period, including the costs of uniforms and/or other
13 business costs and/or deducting wages for purported overpayments from previous pay periods
14 and/or unlawfully deducting wages for negligently damaged property. Such a practice is in violation
15 of, *inter alia*, Labor Code §§ 221 and 222, which subject DEFENDANTS to civil penalties under
16 Labor Code § 2699.

17 46. **Inaccurate Records.** The above-described unlawful policies and practices resulted
18 in DEFENDANTS failure to keep accurate and complete payroll records as required by Labor Code
19 §§ 1174, 1198, and 1199 and section 7 of all applicable Wage Orders. The deficiencies in
20 DEFENDANTS’ records, include: total daily hours worked; applicable rates of pay; and the
21 beginning and end of each work period; and the beginning and end of each meal period.

22 47. **Unreimbursed Business Expenses.** On information and belief, DEFENDANTS
23 required Aggrieved Employees to pay out-of-pocket for business expenses necessary to the
24 performance of their jobs without reimbursement, in violation of Labor Code § 2802. On
25 information and belief, Aggrieved Employees were unlawfully required to provide and maintain
26 work tools that are the employer’s responsibility. DEFENDANTS thus shifted the costs of doing
27 business onto Aggrieved Employees

28 48. For example, on information and belief, DEFENDANTS required Aggrieved

1 Employees to pay for business expenses, including uniforms/work clothing/work
2 shoes/boots/personal protective/safety gear and the use of Aggrieved Employees' personal cell
3 phones/mobile devices, internet and/or data usage for work-related purposes, including to receive
4 and respond to work-related messages and/or phone calls, but Aggrieved Employees were not
5 reimbursed for such work-related expenses.

6 49. On information and belief, DEFENDANTS regularly failed to reimburse and
7 indemnify Aggrieved Employees for business expenses. Pursuant to Labor Code § 2802, Aggrieved
8 Employees are entitled to be reimbursed for all necessary expenses associated with carrying out
9 DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

10 50. DEFENDANTS' failure to provide Aggrieved Employees with reimbursement for
11 necessary business expenses required Aggrieved Employees to subsidize and/or carry the burden of
12 DEFENDANTS' business expenses in violation of Labor Code § 2802.

13 51. **Violation of California Day of Rest Law.** Every employee in California is entitled
14 to "one day's rest [from labor] in seven," and, no employer may cause its employees "to work more
15 than six days in seven." Labor Code §§ 551 and 552.

16 52. On information and belief, DEFENDANTS had, and continue to have, a uniform
17 policy and practice of suffering and permitting and/or requiring Aggrieved Employees to work at
18 least seven (7) consecutive days in a workweek, in violation of, *inter alia*, Labor Code § 551.

19 53. **Sick Leave Violations.** On information and belief, DEFENDANTS failed to provide
20 accurate notice of the balance of accrued paid sick leave available to Aggrieved Employees, either
21 on their wage statements or another written statement.

22 54. For example, on information and belief, DEFENDANTS failed accurately to
23 calculate the sick leave accrual and the sick leave rate of pay owed to Aggrieved Employees by,
24 among other things, failing to calculate the accrued sick leave hours based on the correct number of
25 hours worked due to DEFENDANTS' unlawful timekeeping policies and practices described above
26 and by failing to calculate the sick leave pay rate correctly.

27 55. For example, on information and belief, DEFENDANTS' wage statements for
28 Aggrieved Employees show that DEFENDANTS compensated Aggrieved Employees for any

1 accrued paid sick leave at the employee's respective base rate(s) of pay, not the employee's final
2 rate of pay, and failed to record accurately all accrued paid time off, in violation of Labor Code §§
3 245-248.5.

4 56. On information and belief, DEFENDANTS failed to put Aggrieved Employees on
5 notice of their paid sick leave rights, including by putting their entitlement to sick leave in a written
6 notice pursuant to Labor Code § 2810.5. In addition, at all relevant times, DEFENDANTS failed to
7 maintain accurate records of used paid sick leave and/or the balance of paid sick leave left to the
8 Aggrieved Employee. On information and belief, at all relevant times, DEFENDANTS failed to
9 provide notice of the balance of accrued paid sick leave left for Aggrieved Employees, thus affecting
10 their intelligent exercise of such accrued sick leave. But for this failure, Aggrieved Employees
11 would have used their accrued paid sick leave at least before their respective separations.

12 57. On information and belief, DEFENDANTS failed, and continue to fail, to comply
13 with Labor Code § 246 by failing to provide Aggrieved Employees with a Labor Code-compliant
14 wage statement or separate writing containing the amount of accrued paid sick leave, or other paid
15 time off leave an employer provides in lieu of sick leave, at the time DEFENDANTS pay wages.

16 58. DEFENDANTS have thus unlawfully retained, and continue to retain, paid sick
17 leave in violation of Labor Code §§ 245-248.5.

18 59. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
19 that all employers with 26 or more employees are required to provide up to 80 hours for covered
20 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves or for a
21 family member or if such leave is vaccine-related. On information and belief, DEFENDANTS
22 violated Labor Code § 248.2 by failing to provide Aggrieved Employees with required 2021
23 COVID-19 Supplemental Paid Sick Leave. On information and belief, DEFENDANTS also failed
24 to provide Supplemental Paid Sick Leave in 2022, in violation of Labor Code § 248.6.

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

1 61. On information and belief, DEFENDANTS failed to provide Aggrieved Employees
2 with suitable seating, and when such employees were not engaged in duties which required them to
3 stand, no seating was placed in reasonable proximity to their workstations.

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

9 63. **Failure to Pay Vested Vacation/Paid Time Off:** On information and belief,
10 DEFENDANTS had, and continue to have, a uniform policy and practice of failing to allow
11 Aggrieved Employees to use their vested, unused vacation/paid time off during their employment
12 and/or failing to pay all vested, unused paid time off, including all owed vacation pay/paid time off
13 paid at the correct rate of pay, to Aggrieved Employees upon separation of employment, in violation
14 of Labor Code § 227.3.

15 64. For example, on information and belief, DEFENDANTS paid Aggrieved Employees
16 shift differentials and other non-discretionary remuneration, which DEFENDANTS failed to
17 incorporate into the regular rate(s) of pay calculation for vested, unused paid time off/vacation pay,
18 resulting in the underpayment of paid time off and/or vacation pay owed to Aggrieved Employees,
19 in violation of Labor Code §§ 227.3, 201, and/or 202.

20 65. For example, on information and belief, DEFENDANTS cashed out Aggrieved
21 Employees' vested and unused vacation pay at Aggrieved Employees' base rate(s) of pay rather
22 than the correct final wage rate(s), which included, for example, a shift differential for the Split /
23 Night Shift, at the time of separation.

24 66. **Failure to Timely Pay All Wages Upon Separation of Employment.** On
25 information and belief, DEFENDANTS failed timely to pay all wages earned and owed upon
26 termination or resignation and instead provided final wages without regard to the requirements of
27 Labor Code §§ 201-202.

28 67. On separation of employment, Aggrieved Employees' final paychecks did not

1 include all compensation earned and owed, including all minimum, overtime, and/or premium
2 wages and all accrued, unused vacation pay, paid sick leave, and/or paid time off at the correct rates
3 of pay.

4 68. These violations subject DEFENDANTS to civil penalties under Labor Code §§ 203,
5 210, and/or 256.

6 69. **Violation of Labor Code Section 208.** Labor Code § 208 provides that “[e]very
7 employee who is discharged shall be paid at the place of discharge, and every employee who quits
8 shall be paid at the office or agency of the employer in the county where the employee has been
9 performing labor. All payments shall be made in the manner provided by law.”

10 70. On information and belief, DEFENDANTS have a policy and practice of failing to
11 provide Aggrieved Employees whose employment is terminated with their final paychecks at the
12 place of discharge and/or of failing to provide their final paychecks at the office or agency of
13 DEFENDANTS in the county where the work was performed, in violation of Labor Code § 208.

14 71. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

15 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

16 72. On information and belief, DEFENDANTS require Aggrieved Employees to agree
17 in writing to unlawful conditions of employment, including criminal and/or financial checks as a
18 condition of obtaining and/or continuing employment, in violation of Labor Code § 432.5.

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

23 74. On information and belief, DEFENDANTS also required Aggrieved Employees to
24 submit, and/or agree to submit, in writing to unlawful criminal background checks as a condition of
25 obtaining and/or holding employment in violation of the Investigative Consumer Reporting
26 Agencies Act (“ICRAA”), Civ. Code § 1786, *et seq.*, and the Fair Credit Reporting Act (“FCRA”),
27 15 U.S.C. §1681, *et seq.* On information and belief, DEFENDANTS failed and continue to fail to
28 comply with the requirements of ICRAA and FCRA when conducting background screenings for

1 applicants, including Aggrieved Employees who were subject to a background check as a condition
2 of employment during the application phase.

3 75. On information and belief, DEFENDANTS required Aggrieved Employees to agree
4 in writing to a background check that failed to comply with the requirements set forth in ICRAA
5 and FCRA, including by failing to provide a clear and conspicuous disclosure and/or any disclosure
6 at all, failing to provide disclosures free of extraneous information, failing to provide a lawful
7 purpose for the background check, failing to provide a summary of rights under ICRAA and/or
8 FRCA, failing to provide a way by which the individual could request a copy of the report, failing
9 to disclose the name, address, and telephone number of the third party preparing the report, and/or
10 failing to properly obtain authorization or consent to such a background check.

11 76. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
12 financial checks, DEFENDANTS violated Labor Code § 432.5.

13 77. On further information and belief, DEFENDANTS also required Aggrieved
14 Employees to agree in writing, as a condition of employment, to provide ongoing consent for
15 DEFENDANTS to conduct background checks throughout the duration of employment, in violation
16 of, *inter alia*, ICRAA and/or FCRA, resulting in a further violation of Labor Code § 432.5.

17 78. On further information and belief, DEFENDANTS knew or should have known that
18 requiring Aggrieved Employees to agree to unlawful criminal and/or financial background checks
19 as a condition of obtaining and/or holding employment was unlawful.

20 79. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
21 condition of employment, DEFENDANTS violated Labor Code § 432.5.

22 Unlawful Inquires into Criminal History

23 80. Labor Code § 432.7 prohibits a California employer from asking applicants about
24 past arrest(s) that did not result in a conviction, and, even then, certain limitations apply. On
25 information and belief, DEFENDANTS asked Aggrieved Employees about arrests that did not result
26 in a conviction on their employment application, in violation of California law.

27 81. On information and belief, DEFENDANTS, in violation of, *inter alia*, the Fair
28 Chance Act/the California Fair Employment and Housing Act (“FEHA”), Gov’t Code § 12900, *et*

1 *seq.*, asked Aggrieved Employees about convictions prior to extending an offer of employment
2 and/or otherwise unlawfully inquired into criminal history on their employment application, in
3 violation of Labor Code § 432.5.

4 Unlawful PAGA Waiver

5 82. Additionally, DEFENDANTS violated Labor Code § 432.5 by requiring Aggrieved
6 Employees to agree in writing to other unlawful agreements, including a waiver of PAGA and or
7 representative actions as a condition of employment.

8 83. An action pursuant to PAGA “...is a representative action on behalf of the state”
9 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that “[where] an
10 employment agreement compels the waiver of representative claims under the PAGA, it is contrary
11 to public policy and unenforceable as a matter of state law.” *Iskanian v CLS Transportation Los*
12 *Angeles, LLC* (2014) 59 Cal. 4th 348, 384

13 84. On information and belief, DEFENDANTS required Aggrieved Employees to agree
14 in writing to waive their right to a trial of representative PAGA claims, in violation of California
15 law. DEFENDANTS’ requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA
16 waiver is a violation of Labor Code § 432.5.

17 **FIRST CAUSE OF ACTION**
18 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
19 **2698, *ET SEQ.***

20 **(On behalf of the State of California and Aggrieved Employees against all Defendants)**

21 85. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

22 **Failure to Keep Accurate Records**

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

27 87. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
28 and complete records as required by law, including the following: total daily hours worked;
applicable rates of pay; when Aggrieved Employees began and ended each work period; and when

1 Aggrieved Employees began and ended each meal period.

2 88. DEFENDANTS' failure to keep accurate and complete payroll records for
3 Aggrieved Employees violates Labor Code §§ 1174, 1198, and 1199 and section 7 of all applicable
4 Wage Orders. These violations subject DEFENDANTS to civil penalties under Labor Code §§
5 558.1, 226.6, 1174.5 and 2699. Moreover, each violation of each Labor Code section and Wage
6 Order provision results in a *separate* civil penalty for each Aggrieved Employee for each pay
7 period.¹

8 **Meal Period Violations**

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

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

16 91. Section 7(A)(3) of all applicable Wage Orders provides in pertinent part that meal
17 periods "shall also be recorded." Furthermore, "[i]f an employer's records show no meal period for
18 a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of
19 duty and no meal period was provided." *Brinker, supra*, 53 Cal. 4th at 1052-1053.

20 92. Employers must pay employees an additional hour of pay at the employee's regular
21 rate of pay for each meal period that was missed or late, short, and/or interrupted). Lab. Code §
22 226.7(c); all applicable Wage Orders, §11(B).

23 93. As described above, Aggrieved Employees were not always provided the timely, off
24 duty, 30-minute meal periods to which they were entitled due to understaffing, the nature and

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 constraints of their job duties, and/or performance goals and expectations.

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

6 95. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
7 actual and/or constructive knowledge that its timekeeping policies and practices, including time-
8 rounding and auto-deduction, s resulted in DEFENDANTS' failure to provide Aggrieved
9 Employees the opportunity to take all compliant meal periods to which they are entitled, in violation
10 of California laws.

11 96. DEFENDANTS also failed to pay premium wages in lieu of for Code-compliant
12 meal periods, in violation of California law, and/or failed to pay the correct premium wages by
13 failing to incorporate all non-discretionary remuneration into the regular rate calculation.

14 97. DEFENDANTS' unlawful meal period policies and practices result in, *inter alia*,
15 violations of Labor Code sections 226.7, 512, and 1198-1199 and section 11 of all applicable Wage
16 Orders. These violations subject DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1,
17 and 2699 and section 20 of all applicable Wage Orders.

18 **Rest Period Violations**

19 98. Labor Code § 226.7 provides that employees are entitled to a 10-minute paid rest
20 period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6
21 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14
22 hours. *See Brinker*, 53 Cal. 4th at 1029. California employers must relieve non-exempt employees
23 of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security*
24 *Services, Inc.* (2016) 5 Cal. 5th 257. If the employer fails to provide any required rest period, the
25 employer must pay the employee one hour of pay at the employee's regular rate of compensation
26 for each workday the employer did not provide at least one legally required rest period, pursuant to
27 Labor Code § 226.7 and section 12(B) of the applicable Wage Order(s).

28 99. Moreover, the employee must be "*free from work* for 10 minutes [and the rest period

1 would not include any time to walk or otherwise travel to a place of rest],” and the employer must
2 clearly communicate what “net” ten minutes means. *Augustus*, 5 Cal. 5th at 267-268 (relying on
3 Dept. of Industrial Relations, DLSE Opn. Letter No. 1986.01.03 (Jan. 3, 1986) p. 1) (emphasis in
4 original);; *see also Bufile v. Dollar Fin. Grp., Inc.* (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is
5 on the employer to clearly communicate the authorization and permission [to take rest periods] to
6 its employees.”).

7 100. On information and belief, DEFENDANTS failed to provide Aggrieved Employees
8 all rest periods to which they are entitled. As described above, purported rest periods were
9 sometimes interrupted, cut short, on duty, and/or otherwise subject to DEFENDANTS’ control due
10 to the nature and constraints of Aggrieved Employees’ job duties, understaffing, and/or performance
11 goals and expectations.

12 101. On information and belief, DEFENDANTS implemented policies and/or practices
13 that resulted in the failure to relieve Aggrieved Employees of all duties and employer control during
14 rest periods.

15 102. As a result, Aggrieved Employees did not receive all rest periods to which they are
16 entitled.

17 103. Moreover, on information and belief, DEFENDANTS failed to pay rest period
18 premium wages to Aggrieved Employees in lieu of lawful rest periods. On further information and
19 belief, when a rest period premium was paid, DEFENDANTS failed to include non-discretionary
20 compensation into the regular rate of pay calculation.

21 104. As such, DEFENDANTS violated Labor Code §§ 226.7, 1198, and 1199 and section
22 12 of all applicable Wage Orders. These violations subject DEFENDANTS to civil penalties under
23 Labor Code §§ 558 and 2699 and section 20 of all applicable Wage Orders.

24 **Minimum and Overtime Wage Violations**

25 105. California employers must pay non-exempt for all hours worked, up to forty (40)
26 hour per week or eight (8) hours per day, at a regular rate that is no less than the mandated minimum
27 wage. Lab. Code §1197. The minimum wage standard applies to each hour employees work for
28 which they are not paid, and the employer’s failure to pay for any hour worked by an employee is

1 unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an
2 average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 4th 314,
3 324.

4 106. California employers must also pay employees overtime premium wages, equal to
5 1.5 times the employee's regular rate of pay for all hours worked in excess of eight (8) hours per
6 workday and/or forty (40) hours per workweek. Lab. Code § 510 and section 3 of the applicable
7 Wage Orders. Employers must pay overtime premium wages equal to double the regular hourly rate
8 of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in
9 excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

10 107. As described above, DEFENDANTS fail to compensate Aggrieved Employees for
11 all hours worked because not all hours are recorded by virtue of, among other things,
12 DEFENDANTS' timekeeping policies and practices (and/or other unlawful policies and/or practices
13 described above that resulted in underpayment.

14 108. On information and belief, DEFENDANTS had actual or constructive knowledge
15 that its timekeeping practices, including rounding and auto-deduction, resulted in the underpayment
16 of minimum and overtime wages owed to Aggrieved Employees.

17 109. On information and belief, DEFENDANTS failed to pay twice Aggrieved
18 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
19 time worked beyond eight (8) hours on the seventh consecutive day of work in a workweek, in
20 violation of California's overtime laws.

21 110. On information and belief, DEFENDANTS further violated California's overtime
22 wage laws by failing to incorporate all non-discretionary compensation into the regular rate of pay
23 calculation. Failing to include non-discretionary compensation into the regular rate of pay resulted
24 in a miscalculation of the overtime rate of pay and the underpayment of overtime wages owed to
25 Aggrieved Employees.

26 111. DEFENDANTS' conduct as alleged herein results in violations of Labor Code
27 §§218.5, 510, 558, 558.1, 1194, 1197, 1198, and 1199 and all applicable Wage Orders. These
28 violations subject DEFENDANTS to civil penalties under Labor Code §§ 218.5, 558, 558.1, 1197.1,

1 and 2699 and section 20 of all applicable Wage Orders.

2 **Statutory Wage Violations**

3 112. California Labor Code § 223 prohibits the secret payment of wages lower than
4 required by statute while purporting to pay legal wages. As described above, DEFENDANTS
5 willfully and systematically denied Aggrieved Employees of all earned minimum and overtime
6 wages for all hours worked, which resulted in the payment of less than statutorily required wages.
7 DEFENDANTS acted with the intent to deprive Aggrieved Employees of statutory wages, including
8 minimum and overtime wages, to which they are entitled under California law. Thus,
9 DEFENDANTS paid Aggrieved Employees wages lower than those to which they were entitled
10 while purporting that Aggrieved Employees were paid pursuant to statute. As a result, Aggrieved
11 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
12 Labor Code § 2699(f)-(g).

13 **Refusal to Make Payment**

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

22 **Standard Conditions of Labor Violations**

23 114. Together, Labor Code §§ 1198 and 1199 make unlawful the employment of any
24 employee under conditions prohibited by the Wage Orders and any violation, refusal, or failure to
25 comply with all applicable provisions, orders, and/or ruling of the commission. Therefore,

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 DEFENDANTS' violations as alleged herein subject DEFENDANTS to civil penalties under Labor
2 Code §§ 1197.1 and 2699.

3 **Business Expense Violations**

4 115. Section 2802 of the Labor Code and Section 9(b) of all applicable Wage Orders
5 require employers to indemnify and/or reimburse their employees for all costs necessarily incurred
6 by the employee in direct consequence of the discharge of their duties or of their obedience to the
7 directions of the employer. Lab. Code § 2802(c).

8 116. For example, when employees are required to use their personal cellphones for work,
9 the employer must reimburse a reasonable percentage of the employee's cell phone bill. *See*
10 *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal. App. 4th 1137, 1145.

11 117. DEFENDANTS' failure to reimburse Aggrieved Employees for all necessarily-
12 incurred business expenses required Aggrieved Employees to subsidize and/or carry the burden of
13 DEFENDANTS' business expenses.

14 118. Despite being aware of these expenditures, DEFENDANTS failed to reimburse
15 Aggrieved Employees for such expenses in violation of Labor Code § 2802.

16 **Wage Statement Violations**

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

26 120. DEFENDANTS failed to provide Aggrieved Employees with meal and rest periods
27 that complied with Labor Code section 226.7, the wage statements DEFENDANTS issued to
28 Aggrieved Employees failed and continue to fail to correctly set forth (a) the gross wages earned,

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

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

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

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

26 124. DEFENDANTS' failure to accurately list all hours worked on all wage statements
27 caused and continues to cause confusion to Aggrieved Employees over whether they received all
28 wages owed to them.

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

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

7 127. DEFENDANTS' knowingly and intentionally failed to provide Aggrieved
8 Employees with accurate, itemized wage statements.

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

18 129. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
19 Each violation results in a *separate* civil penalty for each Aggrieved Employee for each pay period.
20 Lab. Code § 226.3.

21 **Unlawful Deductions**

22 130. Labor Code § 221 prohibits an employer from "collect[ing] or receiv[ing] from an
23 employee any part of wages theretofore paid by said employer to said employee." On information
24 and belief, DEFENDANTS made unlawful deductions from Aggrieved Employees paychecks
25 during the relevant period. Such a practice is in violation of Labor Code §§ 221 and 222, which
26 subjects DEFENDANTS to civil penalties under Labor Code § 2699.

27 131. Labor Code § 225.5 provides further that "[i]n addition to, and entirely independent
28 and apart from, any other penalty provided in this article, every person who unlawfully withholds

1 wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil
2 penalty...for each failure to pay each employee”.

3 **Reporting Time Pay Violations**

4 132. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

12 133. Aggrieved Employees were not paid reporting time wages in accordance with the
13 applicable Wage Order(s). For example, on information and belief, Aggrieved Employees
14 sometimes reported to work for a scheduled shift but were sent home and/or were not put to work
15 and were not paid all owed reporting time pay to which they were entitled.

16 134. On information and belief, DEFENDANTS have a policy and practice of failing to
17 pay all reporting time wages to Aggrieved Employees, in violation of Section 5 of the applicable
18 Wage Order. DEFENDANTS’ failure to pay all reporting time wages to Aggrieved Employees
19 violated and continues to violate the applicable Wage Order and, *inter alia*, Labor Code § 1198.

20 **Violation of California Day of Rest Law**

21 135. Sections 551 and 552 of the Labor Code provide that every employee in California
22 is entitled to "one day's rest [from labor] in seven," and, no employer may cause its employees "to
23 work more than six days in seven."

24 136. On information and belief, DEFENDANTS had and continue to have a uniform
25 policy and practice of requiring Aggrieved Employees to work at least seven (7) consecutive days
26 in a workweek, in violation of Labor Code § 551. On information and belief, Aggrieved Employees
27 were suffered and permitted and/or required to work at least seven (7) consecutive days in a
28 workweek, in violation of Labor Code § 551.

1 **Seating Violations**

2 137. Section 14(A-B) of all applicable Wage Orders provides:

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

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

9 138. On information and belief, DEFENDANTS failed to provide Aggrieved Employees
10 with suitable seating in accordance with the applicable Wage Order(s).

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

16 140. DEFENDANTS failed to provide suitable seating in reasonable proximity to
17 Aggrieved Employees' work areas in violation of section 14(A-B) of all applicable Wage Orders,
18 and Labor Code § 1198, subjecting DEFENDANTS to civil penalties under Labor Code § 2699.
19 Each violation of each Labor Code section and Wage Order provision, for each Aggrieved
20 Employee, results in a separate civil penalty.

21 **Sick Leave Violations**

22 141. DEFENDANTS violated California's Healthy Workplaces, Healthy Families Act of
23 2014 ("HWHFA"), Lab. Code § 245, *et seq.* DEFENDANTS either failed to provide paid sick leave
24 to Aggrieved Employees or failed accurately to record the accrual of such paid sick leave due to
25 DEFENDANTS' failing to record all hours worked (as explained above), and/or failing to calculate
26 the paid sick leave rate(s) of pay correctly.

27 142. DEFENDANTS also failed to give Aggrieved Employees notice of their paid sick
28 leave rights, including by putting their entitlement to paid sick leave in a written notice pursuant to

1 Labor Code § 2810.5. In addition, DEFENDANTS failed to maintain accurate records of used paid
2 sick leave and/or the balance of paid sick leave left to the employee, which affected Aggrieved
3 Employees' intelligent exercise of their paid sick leave.

4 143. But for this failure, Aggrieved Employees would have used their paid sick leave at
5 least prior to their respective separations.

6 144. In violation of Labor Code § 247.5, DEFENDANTS failed to maintain records
7 documenting the hours worked and paid sick days accrued and used by Aggrieved Employees,
8 giving rise to a presumption that Aggrieved Employees were entitled to the maximum number of
9 hours accruable.

10 145. On information and belief, DEFENDANTS failed and continue to provide Aggrieved
11 Employees with a Labor Code-compliant wage statement or separate writing containing the balance
12 of paid sick leave, or paid time off leave an employer provides in lieu of sick leave, available at the
13 time DEFENDANTS pay wages, in violation of Labor Code § 246(i).

14 146. On information and belief, PLAINTIFF alleges that all of these practices were
15 experienced and continue to be experienced by other Aggrieved Employees.

16 147. Accordingly, on behalf of the State of California and all other Aggrieved Employees,
17 PLAINTIFF seeks all appropriate relief under PAGA, including injunctive relief, attorney's fees,
18 declaratory relief, and penalties as permitted by law.

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

20 148. Labor Code § 248.2 provides that all employers with 26 or more employees are
21 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
22 Paid Sick Leave to care for themselves or for a family member or if the leave is vaccine-related.
23 DEFENDANTS violated Labor Code § 248.2 by failing to provide Aggrieved Employees with
24 required 2021 COVID-19 Supplemental Paid Sick Leave. On information and belief,
25 DEFENDANTS also failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor
26 Code § 248.6.

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

28 149. California Labor Code § 227.3 provides that when "an employer policy provides for

1 paid vacations, and an employee is terminated without having taken off his vested vacation time, all
2 vested vacation shall be paid to him as wages at his final rate in accordance with...employer policy
3 respecting eligibility or time served...[but such policy] shall not provide for forfeiture of vested
4 vacation time upon termination.”

5 150. On information and belief, DEFENDANTS had and continue to have a uniform
6 policy and practice of failing to pay all vested, unused vacation pay and/or other paid time off at the
7 correct final rate of pay, including non-discretionary compensation, to Aggrieved Employees upon
8 separation of employment, in violation of Labor Code § 227.3.

9 **Untimely Payment of Final Wages**

10 151. Section 201(a) of the Labor Code provides in pertinent part that “wages earned and
11 unpaid at the time of discharge are due and payable immediately.” Section 202(a) of the Labor Code
12 provides in pertinent part that “wages shall become due and payable not later than 72 hours [after
13 the at-will employee quits], unless the employee has given 72 hours previous notice of his or her
14 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

15 152. Section 203 of the Labor Code provides in pertinent part that “[i]f an employer
16 willfully fails to pay...any wages of an employee who is discharged or who quits, [such wages]
17 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
18 therefor is commenced; but the wages shall not continue for more than 30 days.” This 30-day
19 waiting time penalty may be recoverable as a civil penalty pursuant to Labor Code § 256.

20 153. On information and belief, DEFENDANTS failed and continue to fail timely to pay
21 final wages to Aggrieved Employees upon separation of employment, in violation of Labor Code
22 §§ 201 and 202. Moreover, final paychecks, once provided to Aggrieved Employees, did not include
23 all wages earned and owed, as alleged herein.

24 154. As a result, DEFENDANTS violated Labor Code §§ 201, 202, and 203, which
25 violations subject DEFENDANTS to civil penalties under Labor Code §§ 203, 210, and/or 256.

26 **Violation of Labor Code Section 208**

27 155. Section 208 of the Labor Code provides that every discharged employee “shall be
28 paid at the place of discharge,” and every quitting employee “shall be paid at the office or agency

1 of the employer in the county where the employee has been performing labor,” All such payments
2 “shall be made in the manner provided by law.” Lab. Code § 208.

3 156. On information and belief, DEFENDANTS have a policy and practice of failing to
4 provide terminated Aggrieved Employees with their final paychecks at the place of discharge and/or
5 of failing to provide quitting Aggrieved Employees with their final paychecks at the office or agency
6 in the county where they performed work, in violation of Labor Code § 208.

7 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

8 157. *Unlawful Agreements.* Labor Code § 432.5 provides that “no employer...shall
9 require any employee or applicant for employment to agree, in writing, to any term or condition
10 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
11 continue to require Aggrieved Employees to agree in writing to unlawful criminal and/or financial
12 checks as a condition of obtaining and/or continuing employment, in violation of Labor Code §
13 432.5.

14 158. Labor Code § 1024.5 states that certain employers may order a credit check only for
15 certain employees and/or positions. Additionally, the Investigative Consumer Reporting Agencies
16 Act (“ICRAA”), Civ. Code § 1786, *et seq.*, and the Fair Credit Reporting Act (“FCRA”), 15 U.S.C.
17 § 1681, *et seq.*, impose limits on permissible employee background checks, including identifying
18 an appropriate reason for the background check, a separate consent form with certain disclosures,
19 and a way by which to request a copy of the report.

20 159. On information and belief, DEFENDANTS ordered unlawful financial credit checks
21 on Aggrieved Employees, in violation of Labor Code § 1024.5, and required ongoing written
22 consent as a condition of employment, in violation of Labor Code § 432.5.

23 160. On information and belief, DEFENDANTS also required Aggrieved Employees to
24 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
25 obtaining and/or holding employment.

26 161. On further information and belief, DEFENDANTS required Aggrieved Employees,
27 as a condition of employment, to agree in writing to provide DEFENDANTS with ongoing consent
28 to conduct background checks throughout the duration of employment, in further violation of Labor

1 Code § 432.5.

2 162. On further information and belief, DEFENDANTS knew or should have known that
3 requiring Aggrieved Employees to agree to unlawful criminal and/or financial background checks
4 as a condition of obtaining and/or holding employment was unlawful.

5 Unlawful Inquires into Criminal History

6 163. Labor Code § 432.7 prohibits an employer from asking applicants about past arrest(s)
7 unless they resulted in a conviction, and, even then, certain limitations apply. On information and
8 belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in a conviction on
9 its employment application, in violation of California law.

10 164. On information and belief, DEFENDANTS, in violation of California's Fair Chance
11 Act/the California Fair Employment and Housing Act ("FEHA"), Gov't Code § 12900, *et seq.*,
12 asked Aggrieved Employees about convictions prior to extending an offer of employment and/or
13 otherwise unlawfully inquired into criminal history on their employment application in violation of
14 Labor Code § 432.5.

15 Unlawful PAGA Waiver

16 165. DEFENDANTS violated Labor Code § 432.5 by requiring Aggrieved Employees to
17 agree in writing to an unlawful waiver of PAGA enforcement and/or representative actions as a
18 condition of employment.

19 166. An action pursuant to PAGA "...is a representative action on behalf of the state"
20 *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that where "an
21 employment agreement compels the waiver of representative claims under the PAGA, it is contrary
22 to public policy and unenforceable as a matter of state law." See *Iskanian v CLS Transportation Los*
23 *Angeles, LLC* (2014) 59 Cal. 4th 348, 384

24 167. On information and belief, DEFENDANTS required Aggrieved Employees to agree
25 in writing to waive their right to a trial of representative PAGA claims as a condition of employment,
26 in violation of Labor Code § 432.5.

27 168. Under PAGA and the above-mentioned Labor Code sections, including 201-203,
28 208, 210, 216, 221-223, 225.5, 226, 226.7, 227.3, 245-248.6, 256, 432.5, 432.7, 510, 512, 558,

1 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802, and 2810.5, and all
2 applicable Wage Orders, DEFENDANTS are liable for civil penalties under Labor Code §§ 2699(a),
3 2699(f), and 2699(g), in addition to costs, and attorneys' fees.

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1 **PRAYER FOR RELIEF**

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

- 4 1. For civil penalties under PAGA, Lab. Code § 2698 (75% payable to the
5 LWDA and 25% payable to Aggrieved Employees);
6 2. For an order temporarily, preliminarily and permanently enjoining and
7 restraining DEFENDANTS from engaging in similar unlawful conduct as set
8 forth herein;
9 3. For reasonable attorney's fees and costs of suit; and
10 4. For such other and further relief that the Court deems just and proper.

11
12 Dated: November 1, 2023

CROSNER LEGAL, PC

13
14 By: _____



15 Jamie K. Serb, Esq.
16 Brandon Brouillette, Esq.
17 Zachary M. Crosner, Esq.
18 Attorneys for Plaintiff
19 CHARLES KEOPIMPHA
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