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8 Attorneys for Plaintiff MYKA DEMELLO
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 MYKA DEMELLO, on behalf of the State of
13 California, and others similarly situated and
aggrieved,

14 Plaintiff,

15
16 v.

17 PROMEDICA EMPLOYMENT
18 SERVICES, LLC, an Ohio Limited Liability
Company; PROMEDICA EMPLOYMENT
19 SERVICES II, LLC, an Ohio Limited
Liability Company; PROMEDICA
20 HEALTH SYSTEM, INC., an Ohio
Corporation; PROMEDICA SENIOR CARE
21 MEDICAL SERVICES I, LLC, a Delaware
Limited Liability Company; and DOES 1-
22 100, inclusive,

23 Defendants.

Case No.: **CVRI2305406**

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

1 Plaintiff, MYKA DEMELLO, (“PLAINTIFF”), an individual on behalf of PLAINTIFF, the
2 State of California, and all other Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants PROMEDICA EMPLOYMENT SERVICES, LLC, an Ohio Limited
4 Liability Company; PROMEDICA EMPLOYMENT SERVICES II, LLC, an Ohio Limited
5 Liability Company; PROMEDICA HEALTH SYSTEM, INC., an Ohio Corporation; PROMEDICA
6 SENIOR CARE MEDICAL SERVICES I, LLC, a Delaware Limited Liability Company; and
7 DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is
8 informed and believes and thereon alleges as follows:

9 **INTRODUCTION**

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

15 **JURISDICTION AND VENUE**

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

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

24 **THE PARTIES**

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

27 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
28 DEFENDANTS as a non-exempt employee with a job title of Registered Nurse, RN, non-exempt

1 nurse supervisor and/or a similar title(s) and/or position(s) from in or around 2013 through on or
2 around March 23, 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Palm Desert,
3 California location(s).

4 6. Defendant PROMEDICA EMPLOYMENT SERVICES, LLC is an Ohio Limited
5 Liability Company that, at all relevant times, was authorized to do business within the State of
6 California and is doing business in the State of California.

7 7. Defendant PROMEDICA EMPLOYMENT SERVICES II, LLC is an Ohio Limited
8 Liability Company that, at all relevant times, was authorized to do business within the State of
9 California and is doing business in the State of California.

10 8. Defendant PROMEDICA HEALTH SYSTEM, INC. is an Ohio Corporation that, at
11 all relevant times, was authorized to do business within the State of California and is doing business
12 in the State of California.

13 9. Defendant PROMEDICA SENIOR CARE MEDICAL SERVICES I, LLC is a
14 Delaware Limited Liability Company that, at all relevant times, was authorized to do business within
15 the State of California and is doing business in the State of California.

16 10. DEFENDANTS own, operate, manage and/or staff its employees to work at the
17 hospitals, medical centers, offices, hospice centers, skilled nursing and/or rehabilitation facilities,
18 assisted living facilities, and/or other facilities and/or other location(s) in California, including but
19 not limited to, the hospitals, medical centers, offices, hospice centers, skilled nursing and/or
20 rehabilitation facilities, assisted living facilities, and/or other facilities in Palm Desert, California.
21 DEFENDANTS, through its various s/other locations serves the health care industry.¹

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

28 ¹ See <https://www.promedica.org> and <https://promedicaseniorcare.org/regions/california/>. Last visited on October 10, 2023.

become known.

12. 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

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

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

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

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

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

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

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

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

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

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

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

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

9 **PAGA ALLEGATIONS**

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

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

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

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

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

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

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

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

17 **FACTUAL ALLEGATIONS**

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

22 30. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFFS worked for
23 DEFENDANTS as a non-exempt employee with a job title of Registered Nurse, RN, non-exempt
24 nurse supervisor and/or a similar title(s) and/or position(s) from in or around 2013 through on or
25 around March 23, 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS’ Palm Desert,
26 California location(s). PLAINTIFF regularly worked at least fourteen (14) hours per day, at least
27 five (5) days days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
28 DEFENDANTS as hours worked. Based on information and belief, PLAINTIFF and other

1 Aggrieved Employees were also compensated with non-discretionary compensation, such as, but
2 not limited to, non-discretionary bonus pay/incentive pay, shift differential pay and/or other non-
3 discretionary compensation.

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

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

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

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

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

27 36. For example, based on information and belief, Aggrieved Employees were at times
28 required to wait in line behind other Aggrieved Employees to access DEFENDANTS' time-keeping

1 system and/or terminal and/or to enter DEFENDANTS' facilities so they could then clock in for the
2 start of their shifts which said waiting time spent under DEFENDANTS' control that was neither
3 recorded nor compensated, resulting in DEFENDANTS' failure to compensate Aggrieved
4 Employees for all time worked and the underpayment of minimum wages and overtime wages owed
5 to Aggrieved Employees.

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

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

25 39. Based on information and belief, Aggrieved Employees were required to perform
26 additional work tasks prior to clocking in for the start of their shifts and/or after clocking out for the
27 end of their shifts and/or prior to clocking back in from meal periods. For example, based on
28 information and belief, Aggrieved Employees were required to travel through their assigned

1 hospital/DEFENDANTS' facilities to access the time clock in their assigned departments, which
2 took an average of at least a couple minutes each shift.

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

7 41. Based on information and belief, Aggrieved Employees were also required to
8 perform post-shift off-the-clock work that was neither recorded nor compensated. For example,
9 based on information and belief, Aggrieved Employees were required to put away their work
10 tools/equipment, provide shift debriefings/make/receive work-related communications, assist
11 patients, change out of their work clothing/uniforms and/or protective gear after clocking out for the
12 end of their shifts, resulting in DEFENDANTS' failure to compensate Aggrieved Employees for all
13 time worked and the underpayment of minimum wages and overtime wages owed to Aggrieved
14 Employees.

15 42. Based on information and belief, Aggrieved Employees were at times required to
16 clock out for the end of their shifts but were required to return back to work off-the-clock due to the
17 need to assist patients and/or complete other assigned job duties.

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

23 44. Based on information and belief, DEFENDANTS performed an automatic deduction
24 for meal periods that were worked through, interrupted, cut short, and/or during which Aggrieved
25 Employees were not relieved of all duties and DEFENDANTS' control, resulting in
26 DEFENDANTS' failure to compensate Aggrieved Employees for all hours worked and the
27 underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

28 45. Based on information and belief, Aggrieved Employees were also pressured to

1 complete at least some of their work tasks off-the-clock in order to meet DEFENDANTS' goals and
2 expectations.

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

8 47. Based on information and belief, at times, Aggrieved Employees were required after
9 working at their scheduled facility location to cover a shift and/or work a second shift at another of
10 DEFENDANTS' facilities/locations but were not compensated for the time spent driving and/or
11 traveling to the second facility and/or second location resulting in off-the-clock work and the
12 underpayment of wages owed to Aggrieved Employees.

13 48. Based on information and belief, at times, Aggrieved Employees also were required
14 to perform off-the-clock work duties at home/remotely, such as but not limited to, completing
15 trainings/continued education courses and/or reviewing policies and/or other documents remotely
16 as mandated by DEFENDANTS.

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

20 50. Moreover, based on information and belief, DEFENDANTS failed to pay Aggrieved
21 Employees split shift premium wages when they worked split shifts during the relevant period. For
22 example, based on information and belief, at times, DEFENDANTS required Aggrieved Employees
23 to work two separate shifts in the same day. Based on information and belief, DEFENDANTS failed
24 to pay Aggrieved Employees split shift compensation whenever PLAINTIFF's and/or other
25 Aggrieved Employees' work schedules were interrupted by non-paid non-working periods
26 established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See
27 section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay
28 at the minimum wage shall be paid in addition to the minimum wage for that workday...). See, also,

1 Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the
2 minimum wage shall be paid in addition to the minimum wage for that workday, except when the
3 employee resides at the place of employment).

4 51. DEFENDANTS also failed to separately itemize these split shift premium wages on
5 PLAINTIFF's and/or other Aggrieved Employees' wage statements, in violation of Labor Code
6 sections 510, 1194 and all applicable IWC Wage Orders.
7 See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment
8 on the pay stub provided to the employee, and it should be shown as a separate category such as
9 "Split Shift Premium" and should not be lumped into another category such as wages, bonus, etc.
10 DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF
11 and/or other Aggrieved Employees on their wage statements. Based on information and belief,
12 DEFENDANTS failed to pay Aggrieved Employees split shift compensation whenever their work
13 schedules were interrupted by non-paid non-working periods established by DEFENDANTS, which
14 resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders,
15 "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in
16 addition to the minimum wage for that workday..."). Based on information and belief,
17 DEFENDANTS failed to pay Aggrieved Employees for time they were required to spend
18 completing orientation, policy questionnaires, and/or time spent completing the onboarding process
19 including but not limited to reviewing various documents and policies provided by DEFENDANTS.
20 Based on information and belief, this work time was completed off-the-clock and was not
21 compensated.

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

26 53. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
27 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
28 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of

1 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
2 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
3 forty (40) hours in a week.

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

9 55. Based on information and belief, Aggrieved Employees working as in-home care
10 givers typically spent more than twenty percent of their shifts performing housekeeping and/or other
11 non-personal-attendant duties, such as but not limited to, grocery shopping, mopping floors,
12 cleaning bathrooms, watering plants, doing laundry, folding clothes, making beds, among other non-
13 personal attendant job duties. The remainder of their shifts were typically spent attending to the
14 patient(s)/client(s).

15 56. Based on information and belief, DEFENDANTS failed and continue to fail to pay
16 a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours
17 in a week.

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

22 58. Based on information and belief, DEFENDANTS underpaid overtime wages owed
23 to PLAINTIFF and other Aggrieved Employees as a result of scheduling of consecutive workday,
24 graveyard shifts. Based on information and belief, DEFENDANTS maintained a policy and practice
25 of assigning all hours worked in a graveyard shift to the work day when the shift started, as opposed
26 to apportioning the hours worked to the day they were in actuality worked – in other words, a portion
27 of the hours should have been allocated to the work day when the shifted started and the remainder
28 assigned to the subsequent work day when the shift ended. Therefore, PLAINTIFF and other

1 Aggrieved Employees that worked consecutive graveyard shifts did not receive proper overtime and
2 double time wages despite working shifts lasting over eight (8) and/or twelve (12) hours, in violation
3 of California overtime law.

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

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

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

23 62. For example, PLAINTIFF was frequently required to work through part or all of her
24 owed meal periods due to the need to complete assigned job duties. Other times, PLAINTIFF was
25 forced to take her meal period late (i.e. after working more than five (5) hours) due to the need to
26 complete assigned job duties.

27 63. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees
28 were required to monitor and respond to work communication devices during unpaid meal periods

1 and/or were required to remain on DEFENDANTS' premises and/or were otherwise not relieved of
2 all duties and DEFENDANTS' control, in violation of California meal period law.

3 64. Based on information and belief, DEFENDANTS did not pay PLAINTIFFS and
4 other Aggrieved Employees a meal period premium for each missed and/or otherwise legally
5 noncompliant meal period and/or DEFENDANTS failed to pay PLAINTIFFS and other Aggrieved
6 Employees proper meal period premiums for failure to incorporate all non-discretionary
7 compensation, including but not limited to, non-discretionary bonus pay, shift differential pay
8 and/or other non-discretionary compensation into the regular rate(s) used to calculate the owed meal
9 period premiums, resulting in the underpayment of meal period premiums, in violation of California
10 meal period law.

11 65. Based on further information and belief, DEFENDANTS have a policy and practice
12 of refusing to pay meal period premiums unless the employee specifically notates a violation in the
13 timecards. As explained above, Aggrieved Employees were consistently provided meal periods
14 which were not duty-free. As described above, Aggrieved Employees were frequently required to
15 work through part or all of their owed meal periods and/or take their meal periods late due to the
16 need to complete assigned job duties. However, DEFENDANTS put the onus on PLAINTIFF and
17 other Aggrieved Employees to know when their meal period rights were being violated and to
18 request a meal period premium rather than automatically providing PLAINTIFF and other
19 Aggrieved Employees with meal period premium pay when a violation occurred in violation of
20 California law. For example, PLAINTIFF was rarely, if ever, afforded a legally compliant meal
21 period during PLAINTIFF's employment.

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

27 67. Based on information and belief, DEFENDANTS implemented policies and/or
28 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control

1 during unpaid meal periods.

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

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

12 70. Moreover, based on information and belief, Aggrieved Employees who worked shifts
13 of more than ten hours did not receive a second legally compliant thirty (30) minute meal periods.

14 71. For example, when PLAINTIFF worked more than ten (10) and/or twelve (12) hours
15 in a shift, PLAINTIFF frequently had to work through part or all of her second meal period.

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

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

26 74. Based on information and belief, DEFENDANTS had actual and/or constructive
27 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods
28 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in

1 violation of California's meal period laws.

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

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

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

17 78. Based on information and belief, DEFENDANTS did not have a have a compliant
18 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
19 practice. For example, based on information and belief, Aggrieved Employees were frequently if
20 not always unable to take compliant rest periods due to their need to complete assigned job duties
21 and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported
22 rest periods restricted to DEFENDANTS' premises.

23 79. For example, PLAINTIFF was rarely, if ever, afforded a ten-minute off-duty rest
24 period during PLAINTIFF's employment.

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

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

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

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

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

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

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

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

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

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

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

22 91. Separately, and independent of the above allegations, based on information and
23 belief, DEFENDANTS issued wage statements to Aggrieved Employees that failed to list the total
24 hours worked during the pay period, in violation of, including but not limited to, Labor Code section
25 226(a)(2).

26 92. 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 93. For example, based on information and belief, DEFENDANTS issued wage
3 statements to Aggrieved Employees that do not provide an accurate overtime rate because instead
4 of multiplying the regular rate of pay by one and one-half, the wage statements either fail to provide
5 an accurate overtime rate of pay that incorporates all non-discretionary remuneration and/or the
6 wage statements provide at least two (2) separate rate categories with each/all providing
7 corresponding rates that are either the same as the base and/or list a rate that is half the base rate of
8 pay and/or otherwise fail to list the accurate overtime rate of pay, further requiring Aggrieved
9 Employees to perform extensive calculations to determine what their pay rate was for each
10 corresponding hour worked. See, e.g., McKenzie v. Fedex, 765 F. Supp. 2d 1222 (C.D. Cal. 2011).
11 As such, DEFENDANTS do not list an accurate overtime rate anywhere on wage statements issued
12 to Aggrieved Employees, in violation of California law, including but not limited to, Labor Code
13 section 226(a)(9).

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

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

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

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

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

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

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

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

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

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

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

5 105. For example, PLAINTIFF, through counsel, sent a written request for payroll and
6 personnel records to DEFENDANTS, on or around including but not limited to, the following dates:
7 August 9, 2023 and September 21, 2023. Yet, DEFENDANTS failed to timely produce complete
8 records within the time periods delineated by California labor law.

9 106. Based on information and belief, DEFENDANTS failed and continues to fail to
10 timely produce complete payroll and personnel records when requested by other Aggrieved
11 Employees. Based on information and belief, DEFENDANTS failed and continue to fail to timely
12 produce complete time, pay, and personnel records when requested by other Aggrieved Employees.

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

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

27 109. **Unreimbursed Business Expenses.** Based on information and belief,
28 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses

1 as a direct consequence of the performance of their job duties without providing reimbursement, in
2 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
3 Aggrieved Employees were improperly required to provide and maintain work tools that are
4 supposed to be the responsibility of the employer.

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

11 111. For example, based on information and belief, Aggrieved Employees were required
12 to receive and respond to work-related calls and/or messages from including but not limited to
13 supervisors and/or other Aggrieved Employees regarding scheduling and/or other work tasks and/or
14 were required to download and use work-related applications on their personal cell phones/mobile
15 devices but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

16 112. For example, PLAINTIFF was regularly required to respond to work-related calls
17 and/or messages on PLAINTIFF's personal cell phone/mobile device without receiving any
18 reimbursement from DEFENDANTS for the business expenses PLAINTIFF incurred in connection
19 therewith, including but not limited to, increased data plan charges and/or other costs associated
20 with using her personal cell phone/mobile device for work.

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

25 114. Based on information and belief, at times, Aggrieved Employees were not
26 reimbursed for the business use of their personal vehicles, including mileage, wear and tear and/or
27 cost of fuel when they were required to drive between DEFENDANTS' facilities/job sites, and/or
28 otherwise use their personal vehicles in carrying out the duties assigned by DEFENDANTS. As

1 such, DEFENDANTS failed to compensate Aggrieved Employees at the legally mandated Internal
2 Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

3 115. Based on information and belief, DEFENDANTS required Aggrieved Employees to
4 work remotely, including but not limited to, from their homes. As a result of working from home,
5 Aggrieved Employees were required to use their home internet, electricity, and other utilities in the
6 discharge of their job duties. Based on information and belief, DEFENDANTS lacked and continue
7 to lack a policy to reimburse employees who regularly increased utility expenses as a result of
8 working from home. Aggrieved Employees' increased utility and internet expenses were expenses
9 for which DEFENDANTS were required to reimburse Aggrieved Employees a reasonable
10 percentage based on their required business use because said expenses were necessarily incurred by
11 Aggrieved Employees as a direct consequence of the discharge of their duties of employment.
12 However, DEFENDANTS failed to reimburse Aggrieved Employees for these business expenses
13 incurred as a result of being required to work from their homes, in violation of California law. For
14 example, based on information and belief, DEFENDANTS required Aggrieved Employees to access
15 certain documents, including but not limited to, pay stubs through DEFENDANTS' online portal
16 using their personal computers and/or cell phones but failed/fails to pay for a portion of Aggrieved
17 Employees' electric and/or internet and/or cell phone bills.

18 116. Based on information and belief, DEFENDANTS fail and continue to fail to
19 reimburse Aggrieved Employees for expenses Aggrieved Employees incurred in connection with
20 DEFENDANTS' mandated testing and/or licensing requirements, and/or expenses incurred in
21 obtaining certifications and/or re-certifications as required by DEFENDANTS.

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

26 118. Based on information and belief, DEFENDANTS regularly failed to reimburse and
27 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
28 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable

1 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
2 assigned by DEFENDANTS.

3 119. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
4 for all reasonable expenses associated with carrying out their duties required that Aggrieved
5 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
6 2802.

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

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

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

27 123. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
28 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their

1 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
2 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
3 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
4 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
5 used sick leave and the balance of paid sick leave.

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

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

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

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

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

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

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

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

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

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

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

23 133. **Failure to Pay Vested Vacation/Paid Time Off:** Based on information and belief,
24 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
25 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
26 failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation
27 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
28 limited to, shift differentials) to Aggrieved Employees upon separation of employment, in violation

1 of California law, including but not limited to, Labor Code section 227.3.

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

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

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

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

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

1 office or agency of DEFENDANTS in the county where the work was performed, in violation of
2 Labor Code Section 208.

3 139. **Violation of Labor Code Section 432.6.** Based on information and belief,
4 DEFENDANTS required Aggrieved Employees to sign meal period waivers that were universally
5 signed as a condition of employment, including but not limited to, during the onboarding process.
6 Further, these invalid waivers are otherwise unlawful under Labor Code section 432.6.

7 140. Labor Code Section 432.6(a) provides:

8 141. “[A] person shall not, as a condition of employment, continued employment, or the
9 receipt of any employment-related benefit, require any applicant for employment or any employee
10 to waive any right...”

11 142. Labor Code Section 432.6(b) provides in pertinent part:

12 143. “An employer shall not threaten, retaliate, or discriminate against, or terminate any
13 applicant for employment or any employee because of the refusal to the waiver of any right...”

14 144. Based on information and belief, DEFENDANTS require/required Aggrieved
15 Employees to waive their right to first and/or second meal periods as a condition of working for
16 DEFENDANTS. Based on further information and belief, if/when Aggrieved Employees do not
17 abide by DEFENDANTS’ policies and rules, of which this waiver is included as part of
18 DEFENDANTS’ policies/rules, said Aggrieved Employees are subject to disciplinary action, up to
19 and including termination. As such, DEFENDANTS violated including but not limited to, Labor
20 Code section 432.6 by virtue of including but not limited to, requiring Aggrieved Employees to sign
21 invalid meal period waivers as a condition of employment and/or for threatening, retaliating and/or
22 discriminating against and/or terminating Aggrieved Employees because of their refusal to waive
23 their meal period rights.

24 145. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

25 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

26 146. Based on information and belief, DEFENDANTS required Aggrieved Employees to
27 agree in writing to unlawful conditions of employment including but not limited to, unlawful
28 compensation agreements and/or non-solicitation/non-compete agreements, unlawful

1 confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers, unlawful forum
2 selection clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or
3 financial checks as a condition of obtaining and/or continuing employment in violation of Labor
4 Code section 432.5.

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

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

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

1 150. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
2 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
3 section 432.5.

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

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

12 153. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
13 condition of employment, DEFENDANTS violated Labor Code section 432.5.

14 Unlawful Inquires into Criminal History

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

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

24 Unlawful PAGA Waiver

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

28 157. An action pursuant to PAGA “...is a representative action on behalf of the state”

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

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

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

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

20
21 **FIRST CAUSE OF ACTION**
22 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
23 **2698, ET SEQ.**
24 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
25 **Defendants)**

26 161. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

27 **Failure to Keep Accurate Records**

28 162. California Labor Code § 1174 requires employers to keep "accurate and complete"
payroll records showing, among other things, the hours worked daily by all non-exempt employees.
All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the

1 times during which all owed meal periods were provided each day.

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

7 164. DEFENDANTS' failure to keep "accurate and complete" payroll records for
8 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
9 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
10 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
11 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
12 period during which the referenced statutes and Wage Order provisions were violated.²

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

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

20 166. Section (b) of Labor Code section 226 further requires employers to "afford current
21 and former employees the right to inspect or receive a copy of records pertaining to their
22 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
23 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
24 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with

25 ² 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 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
2 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
3 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
4 the employer. Lab. Code section 226(f).

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

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

18 **Meal Period Violations**

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

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

27 171. Employers covered by any and all applicable IWC Wage Orders have an obligation
28 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),

1 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
2 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
3 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
4 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
5 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
6 provided”).

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

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

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

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

26 176. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
27 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
28 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in

1 violation of California's meal period laws.

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

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

12 **Rest Period Violations**

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

27 180. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
28 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards

1 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
2 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
3 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
4 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
5 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
6 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
7 “onus is on the employer to clearly communicate the authorization and permission [to take rest
8 periods] to its employees.”).

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

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

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

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

28 185. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and

1 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
2 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

3 **Failure to Provide Suitable Resting Facilities**

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

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

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

19 189. DEFENDANTS’ failure to provide suitable resting facilities to PLAINTIFF and
20 Aggrieved Employees violated and continue to violate the applicable Wage Order, section 13(B)
21 and the California Labor Code, including but not limited to section 1198.

22 **Minimum and Overtime Wage Violations**

23 190. California law provides that employees in California must be paid for all hours
24 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
25 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
26 The minimum wage standard applies to each hour employees worked for which they were not paid.
27 Therefore, an employer’s failure to pay for any particular hour worked by an employee is unlawful
28 even if averaging an employee’s total pay over all hours worked, paid or not, results in an average

1 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

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

15 193. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
16 Aggrieved Employees for all hours worked.

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

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

27 196. Based on information and belief, DEFENDANTS further violated California's
28 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not

1 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
2 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
3 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
4 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
5 other Aggrieved Employees.

6 197. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
7 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
8 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
9 Wage Orders, section 20.

10 **Statutory Wage Violations**

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

22 **Refusal to Make Payment**

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

1 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
2 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

3 **Standard Conditions of Labor Violations**

4 200. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
5 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
6 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
7 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
8 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
9 minimum/overtime wages and other violations described herein result in separate violations of
10 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
11 1197.1 and 2699.

12 **Business Expense Violations**

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

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

26
27 ³ 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 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

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

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

8 205. 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.

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

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

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

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

26 **Wage Statement Violations**

27 210. California law requires every employer semi-monthly or at the time of each payment
28 of wages to furnish its employees with an accurate itemized wage statement in writing that contains

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

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

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

26 213. As explained above, wage statements issued by DEFENDANTS failed to list the
27 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
28 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and

1 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
2 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
3 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
4 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

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

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

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

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

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

26 221. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
27 Employees have suffered injury. The absence of accurate information on their wage statements has
28 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and

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

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

10 **Unlawful Deductions**

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

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

25 **Reporting Time Pay Violations**

26 225. Section 5 of all applicable IWC Wage Orders, provides as follows:

27 226. (A) Each workday an employee is required to report for work and does report, but is

28 ⁴ Labor Code § 226.3 (establishing that the civil penalty is “per employee per violation”).

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

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

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

18 **Violation of California Day of Rest Law**

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

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

1
2 **Seating Violations**

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

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

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

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

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

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

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

26 236. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
27 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
28 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'

1 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
2 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
3 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
4 Aggrieved Employee, results in a separate civil penalty.

5 **Sick Leave Violations**

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

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

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

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

26 241. Upon information and belief, DEFENDANTS failed and continue to fail to comply
27 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
28 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick

1 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
2 wages.

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

4 243. On information and belief, PLAINTIFF alleges that all of these practices were
5 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

24 247. Based on information and belief, DEFENDANTS had and continue to have a
25 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
26 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
27 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
28 discretionary compensation, including but not limited to, shift differentials) to Aggrieved

1 Employees upon separation of employment, in violation of California law, including but not limited
2 to, Labor Code section 227.3.

3 **Untimely Payment of Final Wages**

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

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

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

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

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

3 252. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
4 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
5 256.

6 **Violation of Labor Code Section 208**

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

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

16 **Violation of Labor Code Section 432.6**

17 255. Based on information and belief, DEFENDANTS required Aggrieved Employees to
18 sign meal period waivers that were universally signed as a condition of employment, including but
19 not limited to, during the onboarding process. Further, these invalid waivers are otherwise unlawful
20 under Labor Code section 432.6.

21 256. Labor Code Section 432.6(a) provides:

22 257. "[A] person shall not, as a condition of employment, continued employment, or the
23 receipt of any employment-related benefit, require any applicant for employment or any employee
24 to waive any right..."

25 258. Labor Code Section 432.6(b) provides in pertinent part:

26 259. "An employer shall not threaten, retaliate, or discriminate against, or terminate any
27 applicant for employment or any employee because of the refusal to the waiver of any right..."

28 260. Based on information and belief, DEFENDANTS require/required Aggrieved

1 Employees to waive their right to first and/or second meal periods as a condition of working for
2 DEFENDANTS. Based on further information and belief, if/when Aggrieved Employees do not
3 abide by DEFENDANTS' policies and rules, of which this waiver is included as part of
4 DEFENDANTS' policies/rules, said Aggrieved Employees are subject to disciplinary action, up to
5 and including termination. As such, DEFENDANTS violated including but not limited to, Labor
6 Code section 432.6 by virtue of including but not limited to, requiring Aggrieved Employees to sign
7 invalid meal period waivers as a condition of employment and/or for threatening, retaliating and/or
8 discriminating against and/or terminating Aggrieved Employees because of their refusal to waive
9 their meal period rights.

10 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

1 check, a separate consent form with required disclosures and certain formatting requirements,
2 additional forms such as a summary of rights, a way by which to request a copy of the report, as
3 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

21 Unlawful Inquires into Criminal History

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

26 269. Upon information and belief, DEFENDANTS, in violation of California law,
27 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
28 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of

1 employment and/or otherwise impermissibly inquired into criminal history on its employment
2 application in violation of California law.

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

8 Unlawful PAGA Waiver

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

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

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

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

28 275. Under the provisions of PAGA and the above mentioned Labor Code sections,

1 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
2 226.7, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
3 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as
4 all interpretations of these laws by California Courts and administrative bodies, as well as any other
5 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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1 **PRAYER FOR RELIEF**

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

- 4 1. For civil penalties under Labor Code Section 2699 (75% payable to the
5 LWDA and 25% payable to Aggrieved Employees);
- 6 2. For an order temporarily, preliminarily and permanently enjoining and
7 restraining DEFENDANTS from engaging in similar unlawful conduct as set
8 forth herein;
- 9 3. For reasonable attorney's fees and costs of suit; and
- 10 4. For such other and further relief that the Court deems just and proper.
- 11

12 Dated: October 11, 2023

CROSNER LEGAL, PC

13
14 By: _____



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