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Clerk of the Superior Court
By B. Ramirez ,Deputy Clerk

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**
12

13 JOHN FUENTES and JASON SADIK,)
14 on behalf of all similarly situated)
15 persons and aggrieved employees,)
16 Plaintiffs,)
17 vs.)

CASE NO.: 24CU019632C

**FIRST AMENDED COMPLAINT FOR
PENALTIES FOR VIOLATION OF LABOR
CODE § 2698 et seq. (PRIVATE ATTORNEYS
GENERAL ACT OF 2004)**

18 SO-CAL DOMINOIDS, INC., a)
19 Delaware corporation; and DOES 1-50,)
20 Defendants.)
21)
22)
23)
24)

1 Plaintiffs JOHN FUENTES (“FUENTES”) and JASON SADIK (“SADIK”), collectively
2 (“Plaintiffs”), hereby submit their complaint against Defendants SO-CAL DOMINOIDS, INC., a
3 Delaware corporation, DOMINOIDS, INC., and DOES 1-50, inclusive (collectively, “Defendants”),
4 on behalf of themselves and other current and former aggrieved employees of Defendants for
5 penalties as follows:

6 **NATURE OF THE ACTION**

7 1. This representative action is brought pursuant to Labor Code § 2698 et seq. (the
8 Private Attorneys General Act of 2004 (“PAGA”) for Defendants’ violations of Labor Code §§ 201,
9 201.3, 202, 203, 204, 204b, 204.1, 204.2, 205, 205.5, 208, 212, 216, 221, 222, 223, 226, 226(a),
10 226(e), 226.3, 226.7, 227.3, 233, 234, 245, 246, 246(a), 247, 247.5, 248, 351, 353, 432.5, 510,
11 510(a), 512, 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199, 2802, 2802(a),
12 2802(b), 2802(c), 2800, et seq, 2810.5, 2699, Cal. Code Reg., Tit. 8, Section 11040(11), (12), (13),
13 (14), ICRAA-CA Civil Code § 1786 et seq., FCRA – 15 U.S.C. § 1681, et seq., and Wage Order 4-
14 2001. This is a PAGA action and not a class action.

15 2. This Complaint challenges Defendants’ systemic illegal employment practices
16 resulting in violations of the stated provisions of the Labor Code against the identified group of
17 employees.

18 3. Plaintiffs are informed and believe and thereon allege that Defendants jointly and
19 severally acted intentionally and with deliberate indifference and conscious disregard to the rights
20 of all employees in (1) failing to timely pay wages upon separation, (2) failing to timely pay wages
21 during employment, (3) failing to maintain accurate employment records, (4) failing to provide
22 complete and accurate wage statements, (5) failing to pay minimum and overtime wages, (6) failing
23 to provide meal periods and authorize and permit rest breaks, (7) failing to reimburse business
24 expenses, (8) failing to provide paid sick days, (9) failing to provide suitable resting facilities, (10)
25 failing to provide suitable seating, (11) unlawful deductions, (12) failing to provide reporting time
26 pay, (13) failing to pay all gratuities, (14) maximum hours of work, (15) failing to pay or provide
27 vested vacation time/paid time off, and (16) unlawful employment contracts, amongst other
28 violations.

THE PARTIES

4. At all material times, Plaintiff FUENTES was a resident of the County of San Diego in the State of California. Plaintiff FUENTES was employed by Defendants as a non-exempt employee from 2009 to December 2023.

5. At all material times, Plaintiff SADIK was a resident of the County of San Diego in the State of California. Plaintiff SADIK was employed by Defendants as a non-exempt employee from February 2022 to December 2023.

6. At all material times, Defendant SO-CAL DOMINOIDS, INC., a California corporation employed Plaintiffs. SO-CAL DOMINOIDS, INC. has restaurant locations within the County of San Diego and Los Angeles within the State of California.

7. At all material times, Defendant DOMINOIDS, INC., a California corporation employed Plaintiffs. DOMINOIDS, INC. has restaurant locations within the County of San Diego and Los Angeles within the State of California.

8. At all material times, Defendants SO-CAL DOMINOIDS, INC. and DOMINOIDS, INC. conducted business within the County of San Diego and Los Angeles in the State of California. All acts described herein occurred at SO-CAL DOMINOIDS, INC. and DOMINOIDS, INC. restaurants in the County of San Diego.

9. The true names and capacities, whether individual, corporate, partnership, associate or otherwise of Defendant DOES 1-50, inclusive, are unknown to Plaintiffs who therefore sue these defendants by such fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiffs will either seek leave to amend this Complaint or file a DOE statement to allege the true names and capacities of DOES 1-50, inclusive, when the same are ascertained.

10. Plaintiffs are informed and believe, and thereon allege, that Defendants are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

11. Plaintiffs are informed and believe, and thereon allege, that Defendants knowingly and willfully acted in concert, conspired together and agreed among themselves to enter into a combination and systemized campaign of activity to cause the injuries and damages hereinafter

1 alleged, and to otherwise consciously and/or recklessly act in derogation of Plaintiffs' rights, and
2 the trust reposed by Plaintiffs and each of said Defendants, said acts being negligently and/or
3 intentionally inflicted. Said conspiracy, and Defendants' concerted actions, were such that, to
4 Plaintiffs' information and belief, and to all appearances, Defendants represented a unified body so
5 that the actions of one defendant was accomplished in concert with, and with knowledge, ratification,
6 authorization and approval of each and every other defendant.

7 12. Plaintiffs are informed and believe, and thereon allege, that each and every defendant
8 named in this complaint, including DOES 1 through 50, inclusive, is, and at all times mentioned
9 herein was, the agent, servant, alter ego, and/or employee of each of the other defendants and that
10 each defendant was acting within the course of scope of his, her or its authority as the agent, servant
11 and/or employee of each of the other defendants. Consequently, each and every defendant is jointly
12 and severally liable to Plaintiffs for the damages sustained as a proximate result of their conduct.

13 13. As such, and based upon all the facts and circumstances incident to Defendants'
14 business in California, Defendants are subject to PAGA and including without limitation to Labor
15 Code §§ 201, 201.3, 202, 203, 204, 204b, 204.1, 204.2, 205, 205.5, 208, 212, 216, 221, 222, 223,
16 226, 226(a), 226(e), 226.3, 226.7, 227.3, 233, 234, 245, 246, 246(a), 247, 247.5, 248, 351, 353,
17 432.5, 510, 510(a), 512, 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199,
18 2802, 2802(a), 2802(b), 2802(c), 2800, et seq, 2810.5, 2699, Cal. Code Reg., Tit. 8, Section
19 11040(11), (12), (13), (14), ICRAA-CA Civil Code § 1786 et seq., FCRA – 15 U.S.C. § 1681, et
20 seq., and Wage Order 4-2001.

21 **JURISDICTION AND VENUE**

22 14. This action is brought pursuant to PAGA. The civil penalties sought by Plaintiff
23 exceed the minimal jurisdiction limits of the Superior Court and will be established according to
24 proof at trial.

25 15. This Court has jurisdiction over this action pursuant to the California Constitution,
26 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except
27 those given by statute to other courts." There are no other statutes assigning jurisdiction of Plaintiffs'
28 claims to another court.

16. This Court has jurisdiction over the violations of PAGA and Labor Code §§ §§ 201, 201.3, 202, 203, 204, 204b, 204.1, 204.2, 205, 205.5, 208, 212, 216, 221, 222, 223, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 233, 234, 245, 246, 246(a), 247, 247.5, 248, 351, 353, 432.5, 510, 510(a), 512, 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199, 2802, 2802(a), 2802(b), 2802(c), 2800, *et seq.*, 2810.5, 2699, Cal. Code Reg., Tit. 8, Section 11040(11), (12), (13), (14), ICRAA-CA Civil Code § 1786 *et seq.*, FCRA – 15 U.S.C. § 1681, *et seq.*, and Wage Order 4-2001.

17. This Court has jurisdiction over all defendants because each defendant is a citizen of California, has sufficient minimum contacts in California, and otherwise intentionally avails itself of California law so as to render this Court's jurisdiction over it consistent with traditional notions of fair play and substantial justice.

18. Venue as to each defendant is proper in this judicial district pursuant to Code of Civil Procedure sections 395(a) and 395.5, because the acts herein complained of occurred in the County of San Diego, and Plaintiffs' resulting injuries were sustained there. Defendants own or maintain offices in the County of San Diego, transact business there, have an agent or agents within the County of San Diego, and are otherwise found within the County of San Diego.

FACTUAL ALLEGATIONS

19. Plaintiffs and aggrieved employees were employed by Defendants in non-exempt, non-managerial positions and similar and incidental positions related to Defendants' business.

20. At all times set forth herein, Defendants employed Plaintiffs and current and former non-exempt employees (hereinafter referred to as “aggrieved employees”).

21. On information and belief, Plaintiffs are informed and believe, and thereon allege, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws. Defendants had the authority to hire and terminate Plaintiffs and the other aggrieved employees; to set work rules and conditions governing Plaintiffs and the other aggrieved employees' employment; and to supervise their daily employment activities.

22. During the relevant time frame, Defendants compensated Plaintiffs and aggrieved

1 employees based upon an hourly basis. Defendants designated Plaintiffs and other persons working
2 in similar positions with non-exempt status.

3 23. During the relevant time frame, Plaintiffs and aggrieved employees worked well over
4 eight (8) hours in a day or forty (40) hours in a workweek and were frequently compelled to work
5 off the clock. Plaintiffs and aggrieved employees worked off the clock hours without receiving
6 compensation from Defendants. Defendants required Plaintiffs and aggrieved employees to work
7 but did not pay Plaintiffs and aggrieved employees for all hours worked on any given day or in
8 any given workweek, because they worked off the clock.

9 24. Defendants' failure to conform with California wage and hour laws to pay Plaintiffs
10 and aggrieved employees violated the provisions of California Labor Code sections 510 and 1194,
11 as well as IWC wage order 7, 4-2001, Labor Code 221-224, et seq.

12 25. Upon information and belief, during the relevant time frame, Defendants maintained
13 and enforced an aggressive set of demands for these non-exempt employees with respect to the goals
14 for its non-exempt employees. Defendants required Plaintiffs and aggrieved employees to interrupt
15 or shorten their lawful meal periods of thirty (30) uninterrupted minutes. Plaintiffs and aggrieved
16 employees were forced to work in excess of five (5) hours per day on a regular basis without being
17 provided a daily thirty (30) minute restrictive-free meal period or without being compensated.
18 During all relevant periods, Defendants illegally and unlawfully required Plaintiffs and aggrieved
19 employees to work through meal periods. Wage orders required that Plaintiffs and aggrieved
20 employees be compensated for the meal periods for which Defendants required Plaintiffs and
21 aggrieved employees to work. Defendants failed to compensate Plaintiffs and aggrieved employees
22 for these meal periods worked on any given day or during any given workweek.

23 26. Upon information and belief, during the relevant time frame, Plaintiffs and aggrieved
24 employees did not receive meal periods; in addition, Defendants' maintained a practice of
25 understaffing store locations, and Defendants' work demands and pressure from Defendants'
26 management, with specific knowledge and/or at the instruction of Defendants, as a result of an
27 implemented policy, regularly required Plaintiffs and aggrieved employees to return to work before
28 completing (constitutes a missed meal period) an uninterrupted meal period of thirty (30) minutes

1 or work through a meal period.

2 27. Upon information and belief, during the relevant time frame, Plaintiffs and aggrieved
3 employees often worked shifts in excess of then (10) hours, yet aggrieved employees were never
4 provided a second, uninterrupted meal period of thirty (30) minutes for those shifts.

5 28. Despite the above-mentioned meal period violations, Defendants never compensated
6 Plaintiffs and never compensated aggrieved employees an additional hour of pay at their regular rate
7 as required by California law when meal periods were not provided.

8 29. During the relevant time frame, Defendants maintained and enforced a schedule and
9 policies that due to business demands that often-required Plaintiffs and aggrieved employees to
10 shorten (constitutes a missed rest break) or forego their lawful rest periods of ten (10) minutes for
11 every four (4) hours worked or major fraction thereof for aggrieved employees. Defendants
12 maintained a practice of understaffing store locations. During all relevant periods, Defendants
13 illegally and unlawfully required Plaintiffs and aggrieved employees to work through rest periods.
14 Wage orders required that Plaintiffs and the aggrieved employees be compensated for the rest
15 periods for which Defendants required Plaintiffs and the aggrieved employees to work. Defendants
16 failed to compensate Plaintiffs and aggrieved employees for these rest periods worked on any given
17 day or in any given workweek.

18 30. Despite the above-mentioned rest period violations, Defendants never compensated
19 Plaintiffs, and on information and belief, never compensated aggrieved employees one additional
20 hour of pay at their regular rate as required by California law for each day on which rest periods
21 were not authorized or permitted.

22 31. Defendants engaged in a series of activities that served to unlawfully deduct wages
23 from Plaintiffs and aggrieved employees. Defendants created a system whereby Plaintiffs and
24 aggrieved employees would be deducted wages based on a formula derived by Defendants that
25 resulted in hourly and overtime wages being deducted from Plaintiffs and aggrieved employees'
26 wages. As a result of the unlawful wage deduction, Plaintiffs and aggrieved employees are entitled
27 to wages, restitution, disgorgement, and waiting time penalties.

28 32. Defendants failed to pay when due and on time, Plaintiffs and aggrieved employees

1 the legal wages they earned or that were due including minimum and overtime wages, reporting time
2 pay and sick leave pay, failed to provide all authorized meal and rest periods owed to Plaintiffs and
3 aggrieved employees, and failed to pay one (1) hour wages in lieu of Defendants' failure to provide
4 a meal and rest period, including at such time when employee quit or was discharged. More
5 specifically, as a result of Defendants' failure to account for overtime worked by aggrieved
6 employees off the clock, unlawfully deducting wages from aggrieved employees, premium
7 payments due for missed meal and rest breaks, and failure to pay sick leave pay and reporting time
8 pay, in producing wage statements, therefore, those wage statements issued to Plaintiffs and all
9 similarly situated aggrieved employees are deemed inaccurate and false. Defendants have made it
10 difficult to account with precision for the unlawfully withheld wages owed to Plaintiffs and
11 aggrieved employees without an examination of all records during the liability period and failed to
12 implement and on information and belief failed to preserve a lawful record-keeping method to record
13 all non-provided meal and rest breaks owed to employees, as required for non-exempt employees by
14 California Labor Code section 226 and applicable California Wage Orders.

15 33. Plaintiffs are informed and believe, and thereon allege, that Defendants know, should
16 know, knew, and/or should have known that Plaintiffs and aggrieved employees were entitled to
17 receive accurate wages for regular and overtime work, should not have received unlawful deductions
18 from their wages, and were entitled to premium wages under Labor Code §226.7(b), but were not
19 receiving accurately calculated compensation.

20 34. Plaintiffs and aggrieved employees incurred expenses while discharging their duties
21 for Defendants, including but not limited to use of their cell phones, expenses for maintaining their
22 work uniforms, and for use of personal vehicles. At all material times set forth herein, Defendants
23 failed to reimburse and indemnify Plaintiffs and aggrieved employees for all necessary expenditures
24 and losses incurred by them, while performing work for Defendant. At all material times set forth
25 herein, Defendants failed to properly reimburse Plaintiffs and the other aggrieved employees
26 pursuant to California law in order to increase Defendants' profits.

27 35. Plaintiffs and aggrieved employees are required to report to work for 8-hour shifts.
28 Upon reporting for work, Plaintiffs and aggrieved employees, are informed there is no work

1 available. In those instances, Plaintiffs and aggrieved employees, are neither provided with work nor
2 paid reporting time pay as required by law.

3 36. Defendants do not and did not compensate Plaintiffs and aggrieved employees for
4 reporting time (i.e., time when Plaintiffs and aggrieved employees were scheduled to report to work,
5 reported to work, were not put to work and were furnished with less than half of their usual and/or
6 scheduled day's work).

7 37. Under Cal. Lab. Code Section 1198, "the employment of an employee ... under
8 conditions of labor prohibited by the [wage] order is unlawful." Plaintiffs and aggrieved employees
9 are entitled to penalties under Cal. Lab. Code Section 2699(f) based on Defendants' violation of the
10 applicable Wage Order, Section 5 and Cal. Lab. Code Section 1198.

11 38. Defendants failed to pay Plaintiffs and aggrieved employees the legal reporting time
12 wages due.

13 39. Defendants have made it difficult to account for the unlawfully withheld reporting
14 time wages owed to Plaintiffs and aggrieved employees without an examination of all records during
15 the liability period and failed to implement and preserve a lawful record-keeping method as required
16 for non-exempt employees per California Labor Code section 226 and the applicable California
17 Wage Order.

18 40. Defendants failed to provide paid sick leave to Plaintiffs and aggrieved employees as
19 set forth in Labor Code 246(a). Also, Defendants failed to pay sick leave at the sick leave rate of
20 pay owed to Plaintiffs and aggrieved employees by failing to base the accrued sick leave hours on
21 the correct number of hours worked (as a result of the rounding/automatic deduction policies and
22 practices for meal periods and/or shift start and end times/other required off-the-clock work including
23 but not limited to work completed during unpaid meal periods and by failing to incorporate multiple
24 rates of pay and/or all non-discretionary remuneration, including but not limited to, non-
25 discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or
26 other non-discretionary compensation into the sick leave pay rate calculation.

27 41. Plaintiffs are informed and believe, and thereon allege, that at all times herein
28 mentioned, Defendants knew that they had a duty to accurately compensate Plaintiffs and aggrieved

1 employees for all hours worked, including minimum and overtime wages, meal and rest period
2 premiums, to provide sick leave pay and reporting time pay, not illegally deduct wages, and that
3 Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly,
4 and/or intentionally failed to do so.

5 **CAUSE OF ACTION**

6 **Violation of Labor Code Section 2698, et seq.**

7 *(Plaintiffs individually, and on behalf of all similarly aggrieved employees, against all Defendants)*

8 42. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material
9 allegations set forth in the preceding paragraphs.

10 43. Plaintiffs are seeking to represent all California non-exempt former and current
11 employees within the State of California, employed by Defendant, at any time from September 27,
12 2022, to the present date (“Aggrieved Employees”). This cause of action under the Private Attorneys
13 General Act (“PAGA”) is a representative action and not a class action.

14 44. PAGA expressly establishes that any provision of the California Labor Code which
15 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
16 divisions, commissions, boards, agencies, or employees for a violation of the California Labor Code,
17 may be recovered through a civil action brought by an aggrieved employee on behalf of himself or
18 herself, and other current or former employees.

19 45. On September 27, 2023, Plaintiffs provided written notice to the LWDA and
20 Defendant of the specific provisions of the Labor Codes they contend were violated, and the theories
21 supporting their contentions. Plaintiffs believes that on or about, December 1, 2023, the sixty-five
22 (65) day notice period expired and the LWDA did not take any action to investigate or prosecute
23 this matter. Therefore, Plaintiffs has exhausted the statutory time period to bring this action.

24 46. Plaintiffs and the other non-exempt employees of Defendants in the state of
25 California are “Aggrieved Employees” as defined by California Labor Code § 2699(c) in that they
26 are all current and former non-exempt employees of Defendants, and one or more of the alleged
27 violations was committed against them.

28 **Failure to Timely Pay Wages Upon Separation**

47. Defendants willfully failed to pay, without abatement, Plaintiffs and Aggrieved

1 Employees upon discharge or quit. Defendants' policy and practice is to refuse to pay Plaintiffs and
2 Aggrieved Employees all wages due and owing to them upon discharge or resignation. Defendants'
3 pay policies and practices violate Labor Code Sections 201, 202, 203 and 208. Labor Code Section
4 201 requires immediate payment of wages upon discharge. Labor Code Section 202 requires
5 payment of all compensation due to employees who voluntarily resign within 72 hours of
6 resignation. Labor Code Section 208 requires final payment of wages to discharged employees "at
7 the place of discharge" and that all employees who resign must be paid at the office or agency of the
8 employer in the county where the employees have been performing labor.

9 48. Defendants' policies and practice of failing to issue final paychecks to Plaintiffs and
10 Aggrieved Employees, without abatement or reduction, in a timely manner according to law places
11 Defendants in violation of these Labor Code provisions. Defendants do not timely pay all unpaid
12 wages due to Plaintiffs and Aggrieved Employees upon separation. Therefore, Defendants violated
13 Labor Code Sections 201, 202, 203, 208.

14 **Failure to Timely Pay Wages During Employment**

15 49. Section 204 of the California Labor Code states that all wages, other than those
16 mentioned in 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and
17 payable twice during each calendar month, on days designated in advance by the employer as the
18 regular paydays. In addition, every person who fails to pay the wages of each employee as provided
19 in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty
20 as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
21 employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred
22 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
23 withheld.

24 50. Defendants' policies and practices fail to provide full pay to Plaintiffs and Aggrieved
25 Employees in a timely manner by failure to pay all wages owed, failure to pay any wages for time
26 worked, failure to pay minimum, overtime and double-time wages, and failure to compensate
27 premium pay rate for missed meal and rest breaks, and thereby failing to account for and pay all
28 wages owed under California law. Each pay period, Defendants failed/fail to pay timely and full

1 payment to Plaintiffs and Aggrieved Employees places Defendants in violation of Labor Code
2 Section 210. Defendants therefore owe penalties accordingly.

3 **Failure to Maintain Accurate Employment Records**

4 51. Defendants failed to maintain accurate employment records for Plaintiffs and
5 Aggrieved Employees including, but not limited to time records, pay stubs, clock in and clock out,
6 meal break periods, rest break periods, and the employment file itself. As a result, Defendants have
7 violated Labor Code section 1174, and 1174.5 for failing to maintain accurate records regarding
8 employment of Plaintiffs and Aggrieved Employees.

9 **Failure to Provide Complete and Accurate Wage Statements**

10 52. Defendants failed to furnish, at the time of each payment of wages, to Plaintiffs and
11 Aggrieved Employees, an accurate/written itemized wage statement containing all the information
12 set forth in Labor Code 226(a).

13 53. Defendants' policy and practice violates Labor Code Section 226. Labor Code
14 Section 226 requires Defendants to provide an accurate/written itemized statement with each
15 payment of wages that includes: 1) Gross earnings, 2) Total hours worked, 3) Number of piece rate
16 units earned, 4) Deductions, 5) Net wages, 6) Dates paid for, 7) Name of employee and last four
17 digits of employee's Social Security number, 8) Name and address of the legal entity of the
18 employer, and 9) a list of all hourly rates worked by the employee, up to and exceeding 40 hours per
19 week, in the corresponding period.

20 54. Defendants' policy and practice of failing to furnish to each employee an accurate
21 and written itemized wage statement for Plaintiffs and Aggrieved Employees, according to law,
22 places Defendants in violation of Labor Code Section 226. Further, Labor Code Section 226.3 states:
23 Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the
24 amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one
25 thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the
26 employer fails to provide the employee a wage deduction statement or fails to keep the records
27 required in subdivision (a) of Section 226. Defendants are in violation of Labor Code Section 226
28 and therefore Plaintiffs, individually and on behalf of the State of California and Aggrieved

1 Employees are entitled to penalties pursuant to Labor Code Section 226.3 in addition to remedies
2 under Labor Code 226(e).

3 **Failure to Pay Minimum and Overtime Wages**

4 55. California Labor Code § 510(a) states that “Eight hours of labor constitutes a day’s
5 work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any
6 one work week and the first eight hours worked on the seventh day of work in any one workweek
7 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
8 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
9 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on
10 any seventh day of a workweek shall be compensated at the rate of no less than twice the regular
11 rate of pay of an employee.”

12 56. Industrial Welfare Commission Wage Order 4-2001(3) states:

13 A (1) “...employees shall not be employed more than eight (8) hours in any workday
14 or more than 40 hours in any workweek or for the first eight (8) hours worked
15 on the seventh (7th) consecutive day of work in a workweek unless the
16 employee receives one and one-half (1 ½) times such employee’s regular rate
17 of pay for all hours worked ... Eight hours of labor constitutes a day’s work.”

18 A (1) (b) “Double the employee's regular rate of pay for all hours worked in excess of
19 12 hours in any workday and for all hours worked in excess of eight (8) hours
20 on the seventh (7th) consecutive day of work in a workweek.”

21 57. California Labor Code § 1197 states “the minimum wage for employees fixed by the
22 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
23 and the payment of a lower wage than the minimum so fixed is unlawful. This section does not
24 change the applicability of local minimum wage laws to any entity.”

25 58. Industrial Welfare Commission Wage Order 4-2001(4) states “(A) Every employer
26 shall pay to each employee wages not less than the following:

27 //

28 //

(1) All employers, regardless of the number of employees, shall pay to each employee fifteen dollars and fifty cents (\$15.50) per hour for all hours worked, effective January 1, 2023.

(2) Prior to January 1, 2023, any employer who employs 26 or more employees shall pay to each employee wages not less than the following: (a) Thirteen dollars (\$13.00) per hour for all hours worked, effective January 1, 2020; (b) Fourteen dollars (\$14.00) per hour for all hours worked, effective January 1, 2021; and (c) Fifteen dollars (\$15.00) per hour for all hours worked, effective January 1, 2022.

(3) Prior to January 1, 2023, any employer who employs 25 or fewer employees shall pay to each employee wages not less than the following: (a) Twelve dollars (\$12.00) per hour for all hours worked, effective January 1, 2020; (b) Thirteen dollars (\$13.00) per hour for all hours worked, effective January 1, 2021; (c) Fourteen dollars (\$14.00) per hour for all hours worked, effective January 1, 2022.

59. Plaintiffs and Aggrieved Employees were required to work off-the-clock at Defendants. For instance, Plaintiffs and Aggrieved Employees clocked out for the end of their shift on a given day, but due to understaffing by Defendants, Plaintiffs and Aggrieved Employees were asked to continue to perform work in the store such as cleaning, food preparation, making food, assisting at registers, and more. Additionally, Defendants also directed Plaintiffs and Aggrieved Employees to work while clocked out for meal breaks, or while on rest breaks. As a result, Plaintiffs and Aggrieved Employees were working off-the-clock for Defendants without the lawful compensation required.

60. As a result of Defendants' business practices, Plaintiffs and Aggrieved Employees were regularly not paid minimum, overtime and double-time wages due to their work for Defendants while off-the-clock. More specifically, the supervisors/management of Plaintiffs and Aggrieved Employees were fully aware that Plaintiffs and Aggrieved Employees were not paid minimum, overtime and double-time wages in these circumstances. This policy and practice of Defendants requiring Plaintiffs and Aggrieved Employees to work off-the-clock directly led to Defendants undercompensating Plaintiffs and Aggrieved Employees for minimum, overtime and double-time

1 hours worked.

2 61. Defendants failed to pay minimum and overtime wages to Plaintiffs and Aggrieved
3 Employees based on California Labor Code §§ 510(a), 1197, and Industrial Welfare Commission
4 Wage Order 4-2001(3) and (4), and therefore owe penalties according to California Labor Code §§
5 1194, 1194.2, and 1197.1.

6 62. Under Cal. Lab. Code Section 1198, “the employment of an employee ... under
7 conditions of labor prohibited by the [wage] order is unlawful.” Plaintiffs and Aggrieved
8 Employees, including the State of California are entitled to penalties under Cal. Lab. Code Section
9 2699(f) based on Defendants’ violation of applicable Wage Order and Cal. Lab. Code Section 1198.

10 **Failure to Provide Meal Periods and Authorize and Permit Rest Breaks**

11 63. Defendants’ policies and practices are to refuse to provide/authorize Plaintiff and
12 Aggrieved Employees meal and/or rest periods. Labor Code Section 512 and Cal. Code Reg., Tit.
13 8, Section 11040(11) requires Defendants to provide an uninterrupted thirty-minute off duty meal
14 break to employees who work more than five hours per day and a second thirty-minute meal break
15 to those working more than ten hours per day. Defendants regularly failed to provide meal breaks
16 as required by law due to understaffing and requiring Plaintiffs and Aggrieved Employees to perform
17 work while clocked out. Therefore, Defendants’ policies and practices violate Labor Code Section
18 512 and Cal. Code Reg., Tit. 8, Section 11040(11).

19 64. Similarly, Cal. Code Reg., Tit. 8, Section 11040(12) provides that Defendants must
20 authorize and permit an off-duty consecutive ten minutes of paid rest break for every four hours of
21 work or fraction thereof. It is Defendants’ policy and practice to fail to authorize and permit
22 Plaintiffs and Aggrieved Employees with the required uninterrupted and off-duty consecutive ten
23 (10) minute rest period per four (4) hours or major fraction thereof.

24 65. Plaintiffs and Aggrieved Employees were denied meal and rest breaks, or were not
25 paid the required one hour of premium pay for missed rest breaks and meal periods. In those
26 instances, wherein Defendants failed to pay Plaintiffs and Aggrieved Employees for
27 missed/shortened/interrupted rest breaks, Plaintiffs and Aggrieved Employees were not
28 compensated at all or only received a portion of wages owed to them for

1 missed/shortened/interrupted meal and/or rest breaks. Despite the above-mentioned meal/rest period
2 violations, Defendants never compensated Plaintiffs and Aggrieved Employees at the regular rate
3 as required by California law for each day on which meal and/or rest periods were not authorized or
4 permitted.

5 66. Upon information and belief, Defendants regularly implemented a policy requiring
6 Plaintiffs and Aggrieved Employees to return to work before completing their meal and rest breaks,
7 resulting in Defendants interrupting the meal and rest breaks of Plaintiffs and Aggrieved Employees.

8 67. Based on information and belief, Defendants required Plaintiffs and Aggrieved
9 Employees to complete off-the-clock work for Defendants when clocking out for meal periods,
10 however, Defendants did not pay the required one hour of premium pay for the missed meal period.
11 Also, Defendants required Plaintiffs and Aggrieved Employees to complete off-the-clock work prior
12 to their scheduled shift time which Defendants failed to take into account when scheduling meal
13 periods for Plaintiffs and Aggrieved Employees. Based on information and belief, meal periods were
14 late, in part due to unaccounted pre-shift off-the-clock work.

15 68. Additionally, due to the fact that Defendants understaffed their stores, Plaintiffs and
16 Aggrieved Employees would not receive their legally compliant thirty (30) minute meal period
17 and/or ten (10) minute rest break.

18 69. Furthermore, Plaintiffs and Aggrieved Employees were denied meal and rest breaks,
19 because Defendants required Plaintiffs and Aggrieved Employees to complete required job duties
20 during their meal and rest breaks, such as handling in-store, call-in, and online orders, making
21 deliveries, assisting customers, and/or finishing food preparation.

22 70. Based on information and belief, despite Defendants' failure to provide lawful meal
23 periods, Defendants implemented a policy and/or practice of rounding the start and end times of
24 Plaintiffs and Aggrieved Employees' meal periods and/or automatically deducting at least thirty
25 minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods
26 restricted to Defendants' premises), despite having actual and/or constructive knowledge that
27 Plaintiffs and Aggrieved Employees did not receive lawful meal periods. Due to Defendants' failure
28 to keep accurate records of the actual start and end times of Plaintiffs and Aggrieved Employees'

1 meal periods, and Defendant illegally rounding the start and end times of purported meal periods,
2 Plaintiffs and Aggrieved Employees were not paid for all time worked for illegal non-compliant meal
3 periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

4 71. Defendants' policies and practices of refusing to provide/authorize meal and/or rest
5 periods for Plaintiffs and Aggrieved Employees due to understaffing, working while clocked out,
6 and Defendants' failure to properly pay one hour of pay for instances where the rest/meal breaks
7 were noncompliant, according to law, places Defendants in violation of these Labor Code and
8 California Code Regulation provisions.

9 72. Labor Code 226.7 states that, "[i]f an employer fails to provide an employee a meal
10 period or rest period in accordance with an applicable order of the Industrial Welfare Commission,
11 the employer shall pay the employee one additional hour of pay at the employee's regular rate of
12 compensation for each work day that the meal or rest period is not provided."

13 73. Thus, Defendants owe meal period and rest period premiums to Plaintiffs and
14 Aggrieved Employees. Defendants are in violation of Labor Code Sections 226.7, 512 and 8 Cal.
15 Code Reg. Sections 11040(11) & (12).

16 **Failure to Reimburse Business Expenses**

17 74. Plaintiffs and Aggrieved Employees have not been reimbursed for necessary
18 business expenses. Necessary business expenses include the pro rata share of expenses related to use
19 of personal cell phones while working because a personal cell phone was/is a necessary expenditure
20 or loss incurred by Plaintiffs and Aggrieved Employees in direct consequence of the discharge of
21 his or her duties, or of his or her obedience to the directions of Defendants.

22 75. Plaintiffs and Aggrieved Employees were expected/required to use their personal cell
23 phones for purposes of contacting customers, speaking with management and co-workers, GPS,
24 update store shelving, and downloading multiple phone applications. Plaintiffs and Aggrieved
25 Employees were required to download the "Dominoids Delivery Experience" application used for
26 customer orders; "Group Meet" application used for communication with the store management and
27 employees, as well as scheduling; and the "Store Experience" application used for inventory.

28 76. Furthermore, based on information and belief, Plaintiffs and Aggrieved Employees

1 have unreimbursed business expenses for maintaining their work uniforms at Defendants, and for
2 using their personal vehicles for business purposes, such as making deliveries to customers of
3 Defendants.

4 77. As a result, Defendants have violated and continue to violate California Labor Code
5 section 2802, by knowingly failing to reimburse Plaintiffs and Aggrieved Employees for necessary
6 business expenditures they incurred. Plaintiffs and Aggrieved Employees have incurred and continue
7 to incur necessary and unreimbursed business expenses/losses. Defendants have had and continue
8 to have a policy and practice of not reimbursing Plaintiffs and Aggrieved Employees for cell phone
9 expenses, uniform costs, and vehicle usage. Defendants must reimburse Plaintiffs and Aggrieved
10 Employees, along with penalties, interest, attorney fees, and costs.

11 78. Defendants fail to reimburse necessary business expenses, violating California Labor
12 Code section 2802.

13 “An employer shall indemnify his or her employee for all necessary expenditures or losses
14 incurred by the employee in direct consequence of the discharge of his or her duties, or of
15 his or her obedience to the directions of the employer, even though unlawful, unless the
16 employee, at the time of obeying the directions, believed them to be unlawful.” (Cal. Labor
17 Code § 2802(a).)

18 California Labor Code section 2802(c) provides: “For purposes of this section, the term
19 “necessary expenditures or losses” shall include all reasonable costs, including, but not
20 limited to, attorney’s fees incurred by the employee enforcing the rights granted by this
21 section.”

22 79. As explained above, Defendants required Plaintiffs and Aggrieved Employees to
23 incur necessary business expenses, but failed to reimburse those necessary business expenses.
24 Because Defendants have failed and continue to fail to reimburse these necessary business expenses
25 to Plaintiff and other Aggrieved Employees, and have failed to pay interest under California Labor
26 Code section 2802(b), Defendants are in violation of California Labor Code section 2802.

27 **Failure to Provide Paid Sick Days**

28 80. Pursuant to Cal. Labor Code section 246:

1 (a) “An employee who ... works in California for the same employer for 30 or more
2 days within a year from the commencement of employment is entitled to paid sick
3 days

4 (b) “An employee shall accrue paid sick days at the rate of not less than one hour per
5 every 30 hours worked...”

6 81. Cal. Labor Code section 247 sets forth:

7 (a) In each workplace of the employer, the employer shall display a poster in a
8 conspicuous place containing all the information specified in subdivision.

9 (b) The poster shall state all of the following:

10 (1) An employee is entitled to accrue, request, and use paid sick days.

11 (2) The amount of sick days provided for by this article.

12 (3) The terms of use of paid sick days.

13 (4) That retaliation or discrimination against an employee who requests paid sick
14 days or uses paid sick days, or both, is prohibited and that an employee has the
15 right under this article to file a complaint with the Labor Commissioner against
16 an employer who retaliates or discriminates against the employee.

17 82. Defendants failed to provide paid sick leave to Plaintiffs and Aggrieved Employees
18 as set forth in Labor Code 246(a). Also, Defendants failed to pay sick leave at the sick leave rate of
19 pay owed to Plaintiffs and Aggrieved Employees by failing to base the accrued sick leave hours on
20 the correct number of hours worked (as a result of the rounding/automatic deduction policies and
21 practices for meal periods and/or shift start and end times/other required off-the-clock work including
22 but not limited to work completed during unpaid meal periods and by failing to incorporate multiple
23 rates of pay and/or all non-discretionary remuneration, including but not limited to, non-
24 discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or
25 other non-discretionary compensation into the sick leave pay rate calculation.

26 83. Defendants failed to provide paid sick leave in the workplace as required by Cal.
27 Labor Code section 247, and failed to provide Plaintiffs and Aggrieved Employees with the proper
28 written notice under Labor Code section 2810.5 of their sick leave pay and balance, such as their

1 Labor Code section 226 wage statements, so that Plaintiffs and Aggrieved Employees would
2 rightfully and lawfully know their sick leave accrual and pay that they had earned while working
3 for Defendants.

4 84. Cal. Labor Code section 247.5 sets forth:

5 (a) An employer shall keep for at least three years records documenting the hours
6 worked and paid sick days accrued and used by an employee, and shall allow the
7 Labor Commissioner to access these records pursuant to the requirements set forth
8 in Section 1174. An employer shall make these records available to an employee
9 in the same manner as described in Section 226. If an employer does not maintain
10 adequate records pursuant to this section, it shall be presumed that the employee is
11 entitled to the maximum number of hours accruable under this article, unless the
12 employer can show otherwise by clear and convincing evidence.

13 85. Defendants failed to maintain records documenting the hours worked and paid sick
14 days accrued and used by Plaintiffs and Aggrieved Employees in violation of Labor Code section
15 247.5.

16 86. Defendants' policies and practice of failing to provide paid sick days to Plaintiffs and
17 Aggrieved Employees, providing notice in the workplace, and maintaining records, according to
18 law places Defendants in violation of Labor Code sections 245-248.5, 233, and 234. Plaintiffs and
19 Aggrieved Employees are entitled to injunctive relief under PAGA and any applicable statutes,
20 attorney's fees, declaratory relief, restitution, penalties as permitted by law.

21 **Failure to Provide Suitable Resting Facilities**

22 87. Pursuant to 8 Cal. Code Reg. Section 11040(13), employees shall be provided with
23 suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities
24 shall be provided in an area separate from the toilet rooms and shall be available to employees during
25 work hours."

26 88. Defendants' stores/locations did not provide Plaintiffs and Aggrieved Employees
27 with a resting facility or suitable breakroom during work hours that employees may use to cease
28 work and recover during meal or rest periods. As a result, Plaintiffs and Aggrieved Employees were

1 forced to adjust to areas not conducive to resting, including but not limited to leaning up against the
2 wall, or searching for facilities outside of Defendants' premises which are not designated or reserved
3 for rest, such as their personal vehicles.

4 89. Defendants' failure to provide suitable resting facilities to Plaintiffs and Aggrieved
5 Employees violated and continues to violate 8 Cal. Code Reg. Sections 11040(13) / Wage Order #4
6 and the California Labor Code, including but not limited to section 1198.

7 **Failure to Provide Suitable Seating**

8 90. Pursuant to 8 Cal. Code Reg. Section 11040(14), employees shall be provided with
9 suitable seats when the nature of the work reasonably permits the use of seats and when they are not
10 actively engaged in the work duties that would not permit them to be seated.

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

12 a. All working employees shall be provided with suitable seats when the
13 nature of the work reasonably permits the use of seats.

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

19 92. Based on information and belief, Defendants failed to provide Plaintiffs and
20 Aggrieved Employees with suitable seating, given that Plaintiffs and Aggrieved Employees did not
21 have seating within reasonable proximity to their work area when such seating would not have
22 interfered with their performance of job duties.

23 93. Defendants' policies and practice of failing to provide suitable seating to Plaintiffs
24 and Aggrieved Employees, according to law places Defendants in violation of Labor Code sections
25 1198 and 1199, subjecting Defendants to civil penalties under Labor Code sections 1199 and 2699.
26 Pursuant to Labor Code section 2699 (f)(2), each violation of each Labor Code section and Wage
27 Order section is a separate civil penalty.

28 **Unlawful Deductions**

94. Cal. Labor Code section 221 sets forth that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

95. Defendants have violated Cal. Labor Code section 221 due to it deducting business costs from the paycheck of Plaintiffs and Aggrieved Employees.

96. Defendants' policy and practice of deducting business costs from Plaintiffs' and Aggrieved Employees' wages, according to law, places Defendants in violation of Labor Code Section 221, et al. Plaintiffs, individually and on behalf of the State of California and Aggrieved Employees are entitled to penalties pursuant to Labor Code Section 2699 and Labor Code section 225.5 which establishes that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee").

Failure to Provide Reporting Time Pay

97. Section 5 of the IWC Order 4-2001 sets forth:

Reporting Time Pay

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

98. Defendants' policies and practices were to have Plaintiffs and Aggrieved Employees report to Defendants' store locations but when they reported to work for a scheduled shift, Plaintiffs and other Aggrieved Employees did not work the required time under Section 5 of the IWC Order 4-2001, they were dismissed for the day without any work, and/or they were not compensated for all the reporting time wages they were owed according to California law. (*Ward v. Tilly's, Inc.* (2019) 31 Cal.App.5th 11)

99. Defendants' policies and practice of failing to pay reporting time, according to law places Defendants in violation of Section 5 of the IWC Order 4-2001, the California Labor Code, Labor Code sections 1198 and 1199, subjecting Defendants to civil penalties under Labor Code sections 1199 and 2699.

Failure to Pay All Gratuities

100. California Labor Code section 351 prohibits employers and their agents from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron, and to make wage deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's wages.

101. California Labor Code section 353 requires California employers to keep accurate records of all gratuities received.

102. Defendants maintain a policy and practice of their agents sharing in or keeping gratuities belonging to Plaintiffs and other Aggrieved Employees, and thereby Plaintiffs and other Aggrieved Employees did not fully receive gratuity left for or given to one or more employees by a patron, including but not limited to patrons paying in cash and credit/debit card. Also, when Defendants charges their patrons an additional service fee on the patron's bill, the Plaintiffs and other Aggrieved Employees did not receive or fully receive the gratuity in the form of a service fee. (*O'Grady v Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity that is intended to the employees providing the service)).

103. Defendants maintain a policy and practice of failing to maintain records of all tips received by customers/patrons.

104. Defendants' policies and practice of failing to issue all gratuities to Plaintiffs and other Aggrieved Employees violates Cal. Labor Code section 351 and 353, Labor Code sections 1198 and 1199. Pursuant to Labor Code section 2699 (f)(2), each violation of each Labor Code section is a separate civil penalty.

Maximum Hours of Work

105. Labor Code sections 1198 and 1199 set forth that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and

1 the standard conditions of labor for employees. The employment of any employee for longer hours
2 than those fixed by the order or under conditions of labor prohibited by the order is unlawful. This
3 includes Labor Code sections 1174, 1197, and 1198, or order or ruling of the commission.

4 106. Defendants' violations of Plaintiffs' and Aggrieved Employees' meal periods, rest
5 periods, minimum wages and overtime wages, business expenses, suitable seating, suitable resting
6 facilities, reporting time pay, split-shift premiums, as well as recordkeeping provisions, and other
7 violations described herein result in separate violations of sections 1198 and 1199. Defendants are
8 in violation of Labor Code Sections 1174, 1197, 1198, 1197.1 and 2699.

9 **Failure to Pay or Provide Vested Vacation Time/Paid Time Off**

10 107. Labor Code section 227.3 sets forth that "Unless otherwise provided by a collective-
11 bargaining agreement, whenever a contract of employment or employer policy provides for paid
12 vacations, and an employee is terminated without having taken off his vested vacation time, all
13 vested vacation shall be paid to him as wages at his final rate in accordance with such contract of
14 employment or employer policy respecting eligibility or time served; provided, however, that an
15 employment contract or employer policy shall not provide for forfeiture of vested vacation time
16 upon termination."

17 108. Defendants maintain a policy and practice of failing to allow Plaintiffs and Aggrieved
18 Employees to use their vested vacation time during their employment with Defendants.
19 Additionally, Defendants fail to pay Plaintiffs and Aggrieved Employees for their vested, accrued
20 paid time off (including but not limited to, all owed vacation pay/paid time off paid at the final rate
21 including non-discretionary compensation, including but not limited to, shift differentials) upon
22 separation of employment., in violation of California law, including but not limited to, Labor Code
23 section 227.3.

24 109. Defendants' policies and practice of failing to allow Plaintiffs and Aggrieved
25 Employees to use their vested vacation time during their employment with Defendants, and failure
26 to pay Plaintiffs and Aggrieved Employees for their vested, accrued paid time off upon separation
27 of employment., places Defendants in violation of Labor Code section 227.3 and California law.

28 //

Unlawful Employment Contracts

110. California Labor Code section 432.5 sets forth that “No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

111. However, Defendants maintain a policy and practice of requiring Plaintiffs and Aggrieved Employees to agree in writing to unlawful conditions of employment including but not limited to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

112. California Labor Code 1024.5 sets forth:

An employer or prospective employer shall not use a consumer credit report for employment purposes unless the position of the person for whom the report is sought is any of the following:

(1) A managerial position.

(2) A position in the state Department of Justice.

(3) That of a sworn peace officer or other law enforcement position.

(4) A position for which the information contained in the report is required by law to be disclosed or obtained.

(5) A position that involves regular access, for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, to all of the following types of information of any one person:

(A) Bank or credit card account information.

(B) Social security number.

(C) Date of birth.

(6) A position in which the person is, or would be, any of the following:

(A) A named signatory on the bank or credit card account of the employer.

(B) Authorized to transfer money on behalf of the employer.

1 (C) Authorized to enter into financial contracts on behalf of the employer.

2 (7) A position that involves access to confidential or proprietary information, including a
3 formula, pattern, compilation, program, device, method, technique, process or trade secret that
4 (i) derives independent economic value, actual or potential, from not being generally known
5 to, and not being readily ascertainable by proper means by, other persons who may obtain
6 economic value from the disclosure or use of the information, and (ii) is the subject of an effort
7 that is reasonable under the circumstances to maintain secrecy of the information.

8 (8) A position that involves regular access to cash totaling ten thousand dollars (\$10,000) or
9 more of the employer, a customer, or client, during the workday.

10 113. However, Defendants maintain a policy and practice of requiring Plaintiffs and
11 Aggrieved Employees to be subjected to a consumer credit report for employment purposes even
12 though Plaintiffs and Aggrieved Employees do not fit any of the above-mentioned positions.
13 Defendants go beyond the procedural and substantive limit of California law regarding employee
14 background checks.

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

22 115. However, Defendants required Plaintiffs and Aggrieved Employees to submit to
23 unlawful financial credit checks despite the requirement in California Labor Code 1024.5, and
24 California and Federal law. Defendants also required Plaintiffs and Aggrieved Employees to agree
25 to criminal background checks as a condition of obtaining and/or holding employment in violation
26 of the ICRAA and the FCRA, and which failed to abide by the requirements set forth in CA Civil
27 Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing
28 to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing

1 to provide disclosures free of extraneous information, failing to provide a lawful purpose for the
2 background check, failing to provide a summary of rights under the ICRAA and/or the FRCA, failing
3 to provide a way by which the individual could request a copy of the report, failing to disclose the
4 name, address, and telephone number of the third party preparing the report, and failing to properly
5 obtain authorization or consent to such a background check, and thus was an unlawful background
6 check.

7 116. Defendants required Plaintiffs and Aggrieved Employees to agree to unlawful
8 criminal and/or financial checks, at the start of employment and during employment, that are not in
9 conformance with the applicable laws. Defendants violated Labor Code section 432.5, and knew
10 that these requirements of Plaintiffs and Aggrieved Employees were unlawful.

11 117. Furthermore, Defendants violated California Labor Code section 432.5 by requiring
12 Plaintiffs and Aggrieved Employees to agree in writing to an unlawful waiver of PAGA (titled
13 “Waiver of Representative Action Claims” in Defendants’ Employee Handbook and Alternative
14 Dispute Resolution Agreement) as a condition of employment. Defendants knew that a PAGA
15 representative action waiver was unlawful, as California law has clearly stated that PAGA is a
16 representative action on behalf of the state that cannot be waived and that a court cannot compel
17 arbitration of an aggrieved employee’s individual PAGA claim. *Kim v Reins Int’l California, Inc.*,
18 (2020) 9 Cal. 5th 73, 86-87. *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348,
19 384. Defendants violated Labor Code section 432.5, by requiring Plaintiffs and Aggrieved
20 Employees to agree, in writing, to an unlawful PAGA waiver.

21 **Penalties**

22 118. Pursuant to California Labor Code § 2699, Plaintiffs, individually, and on behalf of
23 Aggrieved Employees, request and are entitled to recover from Defendants, and each of them, civil
24 penalties, interest, attorneys’ fees and costs pursuant, as well as all statutory penalties against
25 Defendants, and each of them, including but not limited to:

26 119. Penalties under California Labor Code § 2699 in the amount of a hundred dollars
27 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars
28 (\$200) for each aggrieved employee per pay period for each subsequent violation;

120. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

121. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

122. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

123. Any and all additional penalties as provided by the Labor Code and/or other statutes; and

124. Plaintiffs request penalties against Defendants as provided under Lab. Code Section 2699(f), plus reasonable attorneys' fees and costs, in amounts to be proved at trial.

PRAYER FOR RELIEF

Plaintiffs, on behalf of themselves and all other Aggrieved Employees, pray for relief and judgment against Defendants, as follows:

1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code § 2698 et seq., for Defendants' violations of Labor Code §§ 201, 201.3, 202, 203, 204, 204b, 204.1, 204.2, 205, 205.5, 208, 212, 216, 221, 222, 223, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 233, 234, 245, 246, 246(a), 247, 247.5, 248, 351, 353, 432.5, 510, 510(a), 512, 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199, 2802, 2802(a), 2802(b), 2802(c), 2800, et seq, 2810.5, and 2699, Cal. Code Reg., Tit. 8, Section 11040(11), (12), (13), (14), ICRAA-CA Civil Code § 1786 et seq., FCRA – 15 U.S.C. § 1681, et seq., and of Wage Order 4-2001.
2. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code §§

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210, 1194, and 2699, and any other applicable statute; and
3. For such other and further relief the court may deem just and proper.

Dated: January 15, 2025

NATHAN & ASSOCIATES, APC
KOWALSKI EMPLOYMENT LAW CORP.

By: /s/Reuben D. Nathan
Reuben D. Nathan
Attorneys for Plaintiffs