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8 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 SOLANO

12 SHEA HUGHES, on behalf of the State of
California, and others similarly situated and
13 aggrieved,

14 Plaintiff,

15 v.

16
17 TVI, INC., a Washington Corporation; and
DOES 1-100, inclusive,

18 Defendants.
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Clerk of the Superior Court

NOV 28 2023

J. Abueg

By

DEPUTY CLERK

Case No.: CU23-05591

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

1 Plaintiff, SHEA HUGHES, (“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 TVI, INC., a Washington Corporation; and DOES 1-100, inclusive,
4 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
5 thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
26 DEFENDANTS as a non-exempt employee with a job title of recycler and/or a similar title(s) and/or
27 position(s) from in or around July 2022 through on or around July 28, 2023. PLAINTIFF worked
28 for DEFENDANTS at DEFENDANTS’ Vacaville, California location(s). PLAINTIFF regularly

1 worked at least eight (8) hours per day, at least five (5) days per week.

2 6. Defendant TVI, INC. is a Washington Corporation that, at all relevant times, was
3 authorized to do business within the State of California and is doing business in the State of
4 California.

5 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
6 warehouse distribution centers, stores, donation locations and/or other facilities and/or other
7 location(s) in California, including but not limited to, the warehouse distribution centers, stores,
8 donation located in cities and counties throughout California, including but not limited to, Arcadia,
9 Dublin, Fountain Valley, Huntington Beach, La Mirada, Lomita, Murrieta, Redwood City,
10 Riverside, San Jose, Santa Clara, Vacaville, Walnut Creek, and Yorba Linda in Vacaville California.
11 DEFENDANTS operate its various locations under the name(s) Savers Value Village and/or Savers
12 and/or Value Village. DEFENDANTS, through its various locations, serve the retail and/or
13 recycling services industry.¹

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

20 9. PLAINTIFF is further informed and believes that, at all relevant times, each
21 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
22 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
23 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
24 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
25 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
26 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
27 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant

28 ¹ See <https://www.savers.com/>. Last visited on November 27, 2023.

1 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
2 controlled, aided and abetted the conduct of all other Defendants.

3 JOINT LIABILITY

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

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

28 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times

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

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

19 14. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
20 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
21 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
22 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
23 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
24 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively
25 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of
26 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
27 and other Aggrieved Employees' employment with or without cause. Upon information and belief,
28 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in

1 writing the details of their compensation, and the manner in which they were to take meal and rest
2 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
3 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
4 collectively would evaluate their wage rates.

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

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

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

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

22 **PAGA ALLEGATIONS**

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

26 All current and former non-exempt employees that worked either
27 directly or via a staffing agency for any one or more of the
28 DEFENDANTS at any location in California at any time from one

1 year plus 65 days from the filing of the initial Complaint through the
2 present (“PAGA Period”).

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

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

15
16 21. PLAINTIFF, on September 20, 2023, through counsel, gave written notice by online
17 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
18 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
19 in this Complaint (“PAGA Notice”).

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

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

28 24. PLAINTIFF seeks to recover the PAGA civil penalties through a representative

1 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
2 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

3 **FACTUAL ALLEGATIONS**

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

8 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
9 DEFENDANTS as a non-exempt employee with a job title of recycler and/or a similar title(s) and/or
10 position(s) from in or around July 2022 through on or around July 28, 2023. PLAINTIFF worked
11 for DEFENDANTS at DEFENDANTS' Vacaville, California location(s). PLAINTIFF regularly
12 worked at least eight (8) hours per day, at least five (5) days per week. DEFENDANTS paid
13 PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked. Based on
14 information and belief, DEFENDANTS also compensated PLAINTIFF and Aggrieved Employees
15 with shift differential pay and/or other non-discretionary compensation.

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

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

25 29. Based on information and belief, DEFENDANTS implemented a policy and/or
26 practice of rounding meal period start and end times and/or automatically deducting at least thirty
27 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
28 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during

1 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
2 PLAINTIFF and Aggrieved Employees of all wages owed.

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

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

14 32. Based on information and belief, at times, Aggrieved Employees were required to
15 stand in line behind other employees to access DEFENDANTS' time-keeping system and/or were
16 required to spend time reinitiating DEFENDANTS' time-keeping system before they could clock
17 in for the start of their shifts and/or after completing a purported meal period.

18 33. Based on information and belief, Aggrieved Employees were required to complete
19 other off-the-clock work tasks after clocking out for the end of their shifts and/or during
20 uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum
21 and overtime wages owed to Aggrieved Employees.

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

28 35. Based on information and belief, DEFENDANTS did not compensate Aggrieved

1 Employees for all time spent donning and doffing personal protective equipment, safety equipment
2 and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses, hard hats/bump caps/safety
3 helmets and/or face masks) during meal periods, before the start of a scheduled shift, and after
4 completing a scheduled shift, resulting in DEFENDANTS' failure to pay Aggrieved Employees for
5 all work time and the underpayment of minimum wages and overtime wages owed to Aggrieved
6 Employees.

7 36. Based on information and belief, at times, DEFENDANTS' electronic employee
8 time-keeping system/app malfunctioned such that Aggrieved Employees were required to either
9 reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable
10 to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-
11 the-clock work and the underpayment of wages owed to Aggrieved Employees. Based on
12 information and belief, 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 owed to Aggrieved
15 Employees.

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

19 38. Based on information and belief, DEFENDANTS required Aggrieved Employees to
20 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
21 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.
22 Based on information and belief, Aggrieved Employees were also pressured to complete at least
23 some additional work tasks off-the-clock in order to meet DEFENDANTS' goals and expectations.

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

1 Employees.

2 40. Based on information and belief, DEFENDANTS engaged in systemic time record
3 manipulation to shave time worked off PLAINTIFF and other Aggrieved Employees' workdays,
4 by, for example, editing time records to delete portions of total hours worked or otherwise understate
5 actual hours worked by PLAINTIFF and other Aggrieved Employees.

6 41. Based on information and belief, DEFENDANTS failed to pay Aggrieved
7 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
8 Employee worked in California.

9 42. For example, based on information and belief, DEFENDANTS failed to pay
10 Aggrieved Employees working in DEFENDANTS' stores and/or other facilities located in the city
11 of San Jose at the applicable minimum wage rate(s) in effect for the city of San Jose, and as such
12 failed to pay all owed minimum wages.

13 43. Based on information and belief, DEFENDANTS failed to pay Aggrieved
14 Employees working in DEFENDANTS' store(s) and/or other facilities located in the city of
15 Redwood at the applicable minimum wage rate(s) in effect for the city of Redwood, and as such
16 failed to pay all owed minimum wages.

17 44. Moreover, based on information and belief, DEFENDANTS failed to pay
18 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split
19 shifts during the relevant period. For example, based on information and belief, at times,
20 DEFENDANTS required PLAINTIFF and/or other Aggrieved Employees to work two separate
21 shifts in the same day. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF
22 and/or other Aggrieved Employees split shift compensation whenever PLAINTIFF's and/or other
23 Aggrieved Employees' work schedules were interrupted by non-paid non-working periods
24 established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See
25 section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay
26 at the minimum wage shall be paid in addition to the minimum wage for that workday...). See, also,
27 Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the
28 minimum wage shall be paid in addition to the minimum wage for that workday, except when the

1 employee resides at the place of employment). DEFENDANTS also failed to separately itemize
2 these split shift premium wages on PLAINTIFF's and/or other Aggrieved Employees' wage
3 statements, in violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders.
4 See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium
5 payment on the pay stub provided to the employee, and it should be shown as a separate category
6 such as "Split Shift Premium" and should not be lumped into another category such as wages, bonus,
7 etc. DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF
8 and/or other Aggrieved Employees on their wage statements.

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

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

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

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

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

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

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

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

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

25 54. For example, PLAINTIFF earned shift differential pay and/or other non-
26 discretionary compensation, however, DEFENDANTS failed to incorporate all non-discretionary
27 compensation into the regular rate of pay for purposes of calculating the owed overtime rate(s)
28 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF.

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

10 **56.** For example, based on information and belief, Aggrieved Employees were forced to
11 take late meal periods in order to complete assigned job duties. Based on information and belief,
12 Aggrieved Employees were at times interrupted during purported meal periods and/or had meal
13 periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned
14 job duties.

15 **57.** For example, at times, PLAINTIFF had to work through part or all of PLAINTIFF's
16 meal period and/or take shortened, interrupted and/or late meal periods in order to complete assigned
17 job duties.

18 **58.** Based on information and belief, DEFENDANTS would unlawfully edit the clock in
19 and out times for PLAINTIFF's and other Aggrieved Employees' meal periods in order to display
20 at least a thirty minute, off-duty, timely meal period during most if not all shifts worked,
21 notwithstanding the fact that DEFENDANTS had actual and/or constructive knowledge that
22 DEFENDANTS had required PLAINTIFF and other Aggrieved Employees' to perform work-
23 related tasks during their meal periods and/or were otherwise required to take non-compliant meal
24 periods.

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

1 expectations.

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

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

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

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

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

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

27 66. Based on information and belief, DEFENDANTS had actual and/or constructive
28 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods

1 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
2 violation of California's meal period laws.

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

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

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

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

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

25 72. 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 73. 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 74. 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 75. 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 76. 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 77. **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 78. 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 79. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities
2 during their hours of work, particularly during meal and/or rest periods.

3 80. 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 81. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed
7 to provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that
8 complied with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and
9 Aggrieved Employees with meal and rest periods that complied with Labor section 226.7, the wage
10 statements DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to
11 fail to correctly set forth the gross wages earned, the total hours worked, the net wages earned, and
12 all 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 82. 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 83. 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, in violation of including but not limited to, Labor Code section 226 (a)(2).

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

1 85. For example, based on information and belief, wage statements issued by
2 DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee, in violation of Labor
4 Code section 226(a)(9) due to DEFENDANTS' failure to list an overtime rate category at all and/or
5 failure to list a category containing the proper overtime rate.

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

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

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

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

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

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

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

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

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

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

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

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

5 97. For example, DEFENDANTS required PLAINTIFF to purchase steel-toed boots
6 and/or other uniforms/work clothing, protective/safety equipment and/or work shoes/boots,
7 however, DEFENDANTS did not provide PLAINTIFF with any and/or full reimbursement for these
8 business expenses.

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

15 99. As explained above, based on information and belief, Aggrieved Employees were
16 not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost
17 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
18 protective/safety gear.

19 100. Based on information and belief, Aggrieved Employees were improperly required to
20 pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

21 101. Based on information and belief, DEFENDANTS regularly failed to reimburse and
22 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
23 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
24 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
25 assigned by DEFENDANTS.

26 102. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
27 for all reasonable expenses associated with carrying out their duties required that Aggrieved
28 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section

1 2802.

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

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

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

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

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

26 108. Based on information and belief, DEFENDANTS have and continue to have a
27 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
28 consecutively in a workweek, in violation of including but not limited to, Labor Code Section

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

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

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

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

27 112. For example, during PLAINTIFF's employment, DEFENDANTS failed to provide
28 PLAINTIFF paid sick leave by refusing to allow PLAINTIFF to use her paid sick leave. Based on

1 information and belief, DEFENDANTS further failed to put PLAINTIFF on notice of her paid sick
2 leave rights and/or of the correct sick leave balance and/or otherwise interfered with PLAINTIFF's
3 right to take sick leave.

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

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

13 115. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
14 that all employers with 26 or more employees are required to provide up to 80 hours for covered
15 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
16 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
17 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
18 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
19 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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

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

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

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

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

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

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

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

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

27 123. Upon separation of employment, Aggrieved Employees' final paychecks were not
28 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.

1 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
2 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
3 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
4 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate
5 including non-discretionary compensation, including but not limited to, shift differentials).

6 124. For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck
7 for at least approximately two (2) days following PLAINTIFF's date of termination, and
8 PLAINTIFF's late final paycheck was devoid of all wages owed, including but not limited to, all
9 owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or
10 paid time off wages at the properly accrued rates (including but not limited to, all owed vacation
11 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
12 limited to, shift differentials).

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

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

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

1 Labor Code Section 208.

2 128. **Violation of Labor Code Sections 2100-2112.** Pursuant to Labor Code Sections
3 2100–2112, employers with one hundred (100) or more employees at a single warehouse
4 distribution center, or one thousand (1,000) or more employees at one or more warehouse
5 distribution centers in California are required to provide nonexempt employees, upon hire, with a
6 written description of each quota they are subject to (e.g., quantified number of tasks to be performed
7 or materials to be handled) within a defined period of time and any potential adverse employment
8 action that may result from failure to meet the quota. Labor Code Section 2102 (see below) prohibits
9 adverse employment actions against employees who fail to meet their quota if the quota was not
10 properly disclosed to the employee and prohibits quotas that prevent an employee from taking his
11 or her meal or rest breaks, use of restrooms, or that interfere with compliance with California’s
12 occupational health and safety laws.

13 129. Labor Code Section 2101 provides:

14 130. Each employer shall provide to each employee, upon hire, or within 30 days of the
15 effective date of this part, a written description of each quota to which the employee is subject,
16 including the quantified number of tasks to be performed or materials to be produced or handled,
17 within the defined time period, and any potential adverse employment action that could result from
18 failure to meet the quota.

19 131. Labor Code Section 2102 provides:

20 132. An employee shall not be required to meet a quota that prevents compliance with
21 meal or rest periods, use of bathroom facilities, including reasonable travel time to and from
22 bathroom facilities, or occupational health and safety laws in the Labor Code or division standards.
23 An employer shall not take adverse employment action against an employee for failure to meet a
24 quota that does not allow a worker to comply with meal and rest periods, or occupational health and
25 safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been
26 disclosed to the employee pursuant to Section 2101.

27 133. Labor Code Section 2104 provides in pertinent part:

28 134. (a)(1) If a current or former employee believes that meeting a quota caused a

1 violation of their right to a meal or rest period or required them to violate any occupational health
2 and safety laws in the Labor Code or division standards, they have the right to request, and the
3 employer shall provide, a written description of each quota to which the employee is subject and a
4 copy of the most recent 90 days of the employee's own personal work speed data.

5 135. (2) If a former employee requests a written description of the quotas to which they
6 were subject and a copy of their own personal work speed data pursuant to paragraph (1), the
7 employer shall provide 90 days of the former employee's quotas and personal work speed data for
8 the 90 days prior to the date of the employee's separation from the employer.

9 136. (b) An employer that receives a written or oral request for information pursuant to
10 subdivision (a) shall comply with the request as soon as practicable, but no later than 21 calendar
11 days from the date of the request.

12 137. Based on information and belief, during the relevant period, DEFENDANTS
13 employed 100 or more Aggrieved Employee at a single warehouse distribution center and/or
14 employed 1,000 or more Aggrieved Employee at one or more distribution centers in California
15 rendering DEFENDANTS subject to the provisions of Labor Code Sections 2100-2112, during the
16 relevant period.

17 138. Based on information and belief, DEFENDANTS had/have a policy and practice of
18 failing to provide Aggrieved Employee, upon hire, with a written description of each quota they are
19 subject to (e.g., quantified number of tasks to be performed or materials to be handled) within a
20 defined period of time and any potential adverse employment action that may result from failure to
21 meet the quota. Based on further information and belief, DEFENDANTS had/have a policy and
22 practice of subjecting Aggrieved Employee to quotas that prevented those Aggrieved Employee
23 from taking their meal and rest periods and/or using bathroom facilities and/or interfered with
24 compliance of California's occupational health and safety laws.

25 139. Based on further information and belief, DEFENDANTS have/had a policy and
26 practice of subjecting Aggrieved Employee to adverse employment actions for failure to meet a
27 quota that was not disclosed pursuant to Labor Code Section 2101 and/or did not allow them to
28 comply with meal and rest period laws and/or occupational health and safety laws, in violation of

1 Labor Code section 2102.

2 140. Based on information and belief, DEFENDANTS failed and continue to fail to timely
3 produce upon written and/or oral request by current and/or former Aggrieved Employee of the belief
4 that meeting a quota caused a violation of their right to a meal or rest period and/or required them
5 to violate any occupational health and safety laws, a written description of each quota to which the
6 employee is subject and/or a copy of the most recent 90 days of the Aggrieved Employee's own
7 personal work speed data.

8 141. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
9 Code section 2100-2112 as to Aggrieved Employee and are subject to civil penalties.

10 **142. Unlawful Agreements-Unlawful Criminal History Inquiries.**

11 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

19 144. Labor Code section 432.6(a), provides that "a person shall not, as a condition of
20 employment, continued employment, or the receipt of any employment-related benefit, require any
21 applicant for employment or any employee to waive any right..."Based on information and belief,
22 DEFENDANTS required Aggrieved Employee to sign meal period waivers that were universally
23 signed as a condition of employment, including but not limited to, during the onboarding process.
24 By requiring Aggrieved Employee to sign unlawful meal period waivers as a condition of obtaining
25 and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these
26 invalid waivers are otherwise unlawful under Labor Code section 432.6.

27 145. Based on information and belief, DEFENDANTS ordered unlawful financial credit
28 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved

1 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
2 employment, in violation of California and Federal law, which results in a further violation of Labor
3 Code section 432.5.

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

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

23 148. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
24 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
25 section 432.5.

26 149. Based on further information and belief, DEFENDANTS also required Aggrieved
27 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
28 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA

1 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
2 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

6 151. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
7 condition of employment, DEFENDANTS violated Labor Code section 432.5.

8 Unlawful Inquires into Criminal History

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

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

18 Unlawful PAGA Waiver

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

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

28 156. Moreover, the California Supreme Court has ruled that a court cannot compel

1 arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an
2 individual PAGA claim. *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 ("There is
3 no individual component to a PAGA action because 'every PAGA action ... is a representative
4 action on behalf of the state.'")

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

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

14
15 **FIRST CAUSE OF ACTION**
16 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
17 **2698, ET SEQ.**
18 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
19 **Defendants)**

20 159. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

21 **Failure to Keep Accurate Records**

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

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

1 162. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
2 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
3 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
4 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
5 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
6 period during which the referenced statutes and Wage Order provisions were violated.²

7 **Meal Period Violations**

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

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

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

24 166. Employers must pay employees an additional hour of wages at the employees’

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

7 167. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
8 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
9 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
10 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
11 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
12 periods completely.

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

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

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

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

28 172. These unlawful meal period policies and practices result in violations of Labor Code

1 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
2 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
3 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
4 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

5 **Rest Period Violations**

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

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

1 periods] to its employees.”).

2 175. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
3 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
4 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
5 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
6 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
7 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

24 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

15 **Minimum and Overtime Wage Violations**

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

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

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

8 187. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
9 Aggrieved Employees for all hours worked.

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

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

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

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

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

3 **Statutory Wage Violations**

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

15 **Refusal to Make Payment**

16 193. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
17 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
18 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
19 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
20 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
21 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
22 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
23 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

24 **Standard Conditions of Labor Violations**

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

8 **Business Expense Violations**

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

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

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

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

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

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

8 201. 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.

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

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

19 **Wage Statement Violations**

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

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

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

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

26 208. 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).

2 209. For example, based on information and belief, wage statements issued by
3 DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee, in violation of Labor
5 Code section 226(a)(9) due to DEFENDANTS' failure to list an overtime rate category at all and/or
6 failure to list a category containing the proper overtime rate.

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

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

13 212. For example, based on information and belief, wage statements issued by
14 DEFENDANTS failed to list the inclusive dates of the pay period for which the Aggrieved
15 Employee is being paid.

16 213. For example, based on information and belief, at times, DEFENDANTS issued wage
17 statements to Aggrieved Employees containing payment for hours worked during previous pay
18 periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate
19 pay period for that retroactive pay, further failing to list the total hours worked for the pay period,
20 including but not limited to, the total hours worked for the pay period the retroactive pay corresponds
21 with.

22 214. For example, based on information and belief, at times, DEFENDANTS issued wage
23 statement(s) to PLAINTIFF, that list a category for "Retro" pay without including the inclusive
24 dates of the accurate pay period for that "Retro" pay, further failing to list the total hours worked
25 for the pay period, including but not limited to, the total hours worked for the pay period the
26 retroactive pay corresponds with, in violation of including but not limited to, Labor Code section
27 226(a)(2) and/or Labor Code section 226(a)(6).

28 215. DEFENDANTS' failure to accurately list all hours worked on all wage statements

1 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
2 Employees over whether they received all wages owed to them.

3 216. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
4 they could not easily determine whether they received all wages owed to them and whether they
5 were paid for all hours worked.

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

9 218. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and
10 Aggrieved Employees with accurate, itemized wage statements.

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

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

23 **Unlawful Deductions**

24 221. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
25 an employee any part of wages theretofore paid by said employer to said employee." Based on
26 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
27 paychecks during the relevant period, including but not limited to, deducting costs of uniforms

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

1 and/or other business costs and/or deducting wages for purported overpayments from previous pay
2 periods and/or unlawfully deducting wages for negligently damaged property. Such a practice is in
3 violation of including but not limited to, Labor Code Sections 221-222 which subjects
4 DEFENDANTS to civil penalties under Labor Code Section 2699.

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

11 **Reporting Time Pay Violations**

12 223. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

21 225. Aggrieved Employees were not paid reporting time wages in accordance with
22 California law, including but not limited to the applicable IWC Wage Order. For example, based on
23 information and belief, at times, Aggrieved Employees reported to work for a scheduled shift but
24 were sent home and/or were not put to work and were not paid all owed reporting time pay wages
25 in accordance with California law.

26 226. Based on information and belief, DEFENDANTS have a policy and practice of
27 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
28 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS’ failure to

1 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
2 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

3 **Violation of California Day of Rest Law**

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

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

14 **Seating Violations**

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

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

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

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

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

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

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

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

17 **Sick Leave Violations**

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

25 236. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
26 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
27 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
28 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and

1 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

6 238. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
7 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
8 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
9 were entitled to the maximum number of hours accruable.

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

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

16 241. On information and belief, PLAINTIFF alleges that all of these practices were
17 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

8 245. Based on information and belief, DEFENDANTS had and continue to have a
9 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
10 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
11 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
12 discretionary compensation, including but not limited to, shift differentials) to Aggrieved
13 Employees upon separation of employment, in violation of California law, including but not limited
14 to, Labor Code section 227.3.

15 **Untimely Payment of Final Wages**

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

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

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

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

12 **Violation of Labor Code Section 208**

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

17 251. Based on information and belief, DEFENDANTS have a policy and practice of
18 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
19 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
20 office or agency of DEFENDANTS in the county where the work was performed, in violation of
21 Labor Code Section 208.

22 **Violation of Labor Code Sections 2100-2112**

23 252. Pursuant to Labor Code Sections 2100–2112, employers with one hundred (100) or
24 more employees at a single warehouse distribution center, or one thousand (1,000) or more
25 employees at one or more warehouse distribution centers in California are required to provide
26 nonexempt employees, upon hire, with a written description of each quota they are subject to (e.g.,
27 quantified number of tasks to be performed or materials to be handled) within a defined period of
28 time and any potential adverse employment action that may result from failure to meet the quota.

1 Labor Code Section 2102 (see below) prohibits adverse employment actions against employees who
2 fail to meet their quota if the quota was not properly disclosed to the employee and prohibits quotas
3 that prevent an employee from taking his or her meal or rest breaks, use of restrooms, or that interfere
4 with compliance with California's occupational health and safety laws.

5 253. Labor Code Section 2101 provides:

6 254. Each employer shall provide to each employee, upon hire, or within 30 days of the
7 effective date of this part, a written description of each quota to which the employee is subject,
8 including the quantified number of tasks to be performed or materials to be produced or handled,
9 within the defined time period, and any potential adverse employment action that could result from
10 failure to meet the quota.

11 255. Labor Code Section 2102 provides:

12 256. An employee shall not be required to meet a quota that prevents compliance with
13 meal or rest periods, use of bathroom facilities, including reasonable travel time to and from
14 bathroom facilities, or occupational health and safety laws in the Labor Code or division standards.
15 An employer shall not take adverse employment action against an employee for failure to meet a
16 quota that does not allow a worker to comply with meal and rest periods, or occupational health and
17 safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been
18 disclosed to the employee pursuant to Section 2101.

19 257. Labor Code Section 2104 provides in pertinent part:

20 258. (a)(1) If a current or former employee believes that meeting a quota caused a
21 violation of their right to a meal or rest period or required them to violate any occupational health
22 and safety laws in the Labor Code or division standards, they have the right to request, and the
23 employer shall provide, a written description of each quota to which the employee is subject and a
24 copy of the most recent 90 days of the employee's own personal work speed data.

25 259. (2) If a former employee requests a written description of the quotas to which they
26 were subject and a copy of their own personal work speed data pursuant to paragraph (1), the
27 employer shall provide 90 days of the former employee's quotas and personal work speed data for
28 the 90 days prior to the date of the employee's separation from the employer.

1 260. (b) An employer that receives a written or oral request for information pursuant to
2 subdivision (a) shall comply with the request as soon as practicable, but no later than 21 calendar
3 days from the date of the request.

4 261. Based on information and belief, during the relevant period, DEFENDANTS
5 employed 100 or more Aggrieved Employee at a single warehouse distribution center and/or
6 employed 1,000 or more Aggrieved Employee at one or more distribution centers in California
7 rendering DEFENDANTS subject to the provisions of Labor Code Sections 2100-2112, during the
8 relevant period.

9 262. Based on information and belief, DEFENDANTS had/have a policy and practice of
10 failing to provide Aggrieved Employee, upon hire, with a written description of each quota they are
11 subject to (e.g., quantified number of tasks to be performed or materials to be handled) within a
12 defined period of time and any potential adverse employment action that may result from failure to
13 meet the quota. Based on further information and belief, DEFENDANTS had/have a policy and
14 practice of subjecting Aggrieved Employee to quotas that prevented those Aggrieved Employee
15 from taking their meal and rest periods and/or using bathroom facilities and/or interfered with
16 compliance of California's occupational health and safety laws.

17 263. Based on further information and belief, DEFENDANTS have/had a policy and
18 practice of subjecting Aggrieved Employee to adverse employment actions for failure to meet a
19 quota that was not disclosed pursuant to Labor Code Section 2101 and/or did not allow them to
20 comply with meal and rest period laws and/or occupational health and safety laws, in violation of
21 Labor Code section 2102.

22 264. Based on information and belief, DEFENDANTS failed and continue to fail to timely
23 produce upon written and/or oral request by current and/or former Aggrieved Employee of the belief
24 that meeting a quota caused a violation of their right to a meal or rest period and/or required them
25 to violate any occupational health and safety laws, a written description of each quota to which the
26 employee is subject and/or a copy of the most recent 90 days of the Aggrieved Employee's own
27 personal work speed data.

28 265. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor

1 Code section 2100-2112 as to Aggrieved Employee and are subject to civil penalties.

2 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

3 266. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
4 require any employee or applicant for employment to agree, in writing, to any term or condition
5 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
6 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
7 conditions of employment including but not limited to, unlawful non-solicitation/non-compete
8 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
9 waivers, including but not limited to, unlawful meal period waivers, unlawful forum selection
10 clauses and/or choice of law provisions/agreements unlawful criminal and/or financial checks as a
11 condition of obtaining and/or continuing employment in violation of including but not limited to
12 Labor Code section 432.5.

13 267. Labor Code section 432.6(a), provides that “a person shall not, as a condition of
14 employment, continued employment, or the receipt of any employment-related benefit, require any
15 applicant for employment or any employee to waive any right...”Based on information and belief,
16 DEFENDANTS required Aggrieved Employee to sign meal period waivers that were universally
17 signed as a condition of employment, including but not limited to, during the onboarding process.
18 By requiring Aggrieved Employee to sign unlawful meal period waivers as a condition of obtaining
19 and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these
20 invalid waivers are otherwise unlawful under Labor Code section 432.6.

21 268. The California Labor Code places certain procedural and substantive limits on an
22 employers’ ability to conduct employee background checks and on how employers can use the
23 information they obtain through those background checks. Labor Code section 1024.5 states that
24 employers, except for financial institutions, may order a credit check only if the individual works
25 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
26 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
27 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
28 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee

1 background check, including but not limited to identifying an appropriate reason for the background
2 check, a separate consent form with required disclosures and certain formatting requirements,
3 additional forms such as a summary of rights, a way by which to request a copy of the report, as
4 well as proper notice of adverse actions taken, among other statutory requirements.

5 269. 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 them to
7 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
8 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

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

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

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

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

22 Unlawful Inquires into Criminal History

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

27 275. Upon information and belief, DEFENDANTS, in violation of California law,
28 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act

1 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
2 employment and/or otherwise impermissibly inquired into criminal history on its employment
3 application in violation of California law.

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

9 Unlawful PAGA Waiver

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

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

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

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

1 281. Under the provisions of PAGA and the above mentioned Labor Code sections,
2 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
3 226.7, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
4 1197.1, 1198, 1198.5, 1199, 2100-2112, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders
5 as well as all interpretations of these laws by California Courts and administrative bodies, as well
6 as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
7 penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: November 28, 2023

CROSNER LEGAL, PC

By: 

Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
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SHEA HUGHES