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on behalf of the State of California,
9 and others similarly situated and aggrieved

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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By: Elda Ramirez, DEPUTY

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN BERNARDINO**

12 KATIE SALTER, on behalf of the State of
13 California, and others similarly situated and
aggrieved,

14 Plaintiff,

15
16 v.

17 VICTORVILLE TREASURE HOLDINGS
18 LLC, a California Limited Liability
Company; and DOES 1-100, inclusive,

19 Defendants.
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Case No.: CIVSB2329469

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

1 Plaintiff, KATIE SALTER, (“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 VICTORVILLE TREASURE HOLDINGS LLC, a California
4 Limited Liability Company; and DOES 1-100, inclusive, (collectively referred to herein as
5 “DEFENDANTS”). PLAINTIFF is informed and believes and 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 Riverside 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 San
22 Bernardino.

23 **THE PARTIES**

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

26 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
27 DEFENDANTS as a non-exempt employee with a job title of bartender and/or a similar title(s)
28 and/or position(s) from including but not limited to, on or around May 30, 2015, through in or

1 around 2018, and from in or around 2018, through in or around September 2023. PLAINTIFF
2 worked for DEFENDANTS at DEFENDANTS' Victorville, California location(s), which
3 operates/operated under the name "Holiday Inn".

4 6. Defendant VICTORVILLE TREASURE HOLDINGS LLC is a California Limited
5 Liability Company that, at all relevant times, was authorized to do business within the State of
6 California and is doing business in the State of California.

7 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
8 hotels, restaurants, and/or facilities and/or other location(s) in California, including but not limited
9 to the hotels, restaurants, and/or facilities in Victorville, California. DEFENDANTS, through its
10 various locations, serve the hospitality industry.

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

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

27 **JOINT LIABILITY**

28 10. Under California law, the definition of the terms "to employ" are broadly construed

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

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

24 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
25 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
26 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
27 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
28 policies and practices regardless of the location(s) where they worked. Among other things,

1 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
2 in DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control
3 over the day-to-day operations and employment matters, including the power to hire and fire, set
4 schedules, issue employee policies, and determine rates of compensation across its locations in
5 California; (3) DEFENDANTS utilize the same policies and procedures for all California
6 employees, including issuing the same employee handbooks and other form agreements; (4)
7 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
8 employment matters; and, (6) DEFENDANTS share employees.

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

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

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

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

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

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

18 **PAGA ALLEGATIONS**

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

22 All current and former non-exempt employees that worked either
23 directly or via a staffing agency for any one or more of the
24 DEFENDANTS at any location in California at any time from one
25 year plus 65 days from the filing of the initial Complaint through the
26 present ("PAGA Period").

27 20. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
28 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory

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

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

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

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

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

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

26 **FACTUAL ALLEGATIONS**

27 25. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees,
28 worked for DEFENDANTS in the State of California. At all times referenced herein,

1 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
2 permitted them to work.

3 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
4 DEFENDANTS as a non-exempt employee with a job title of bartender and/or a similar title(s)
5 and/or position(s) from including but not limited to, on or around May 30, 2015, through in or
6 around 2018, and from in or around 2018, through in or around September 2023. PLAINTIFF
7 worked for DEFENDANTS at DEFENDANTS' Victorville, California location(s), which
8 operates/operated under the name "Holiday Inn". PLAINTIFF regularly worked at least three and
9 one-half (3 ½) hours to six (6) hours per day. DEFENDANTS paid PLAINTIFF an hourly rate for
10 time counted by DEFENDANTS as hours worked. PLAINTIFF also earned tips.

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

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

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

26 30. Based on information and belief, Aggrieved Employees were not paid for all hours
27 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
28 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-

1 the clock work policies and/or practices.

2 31. For example, based on information and belief, DEFENDANTS did not compensate
3 Aggrieved Employees for time spent donning and doffing personal protective equipment and/or
4 uniforms (e.g., rubber gloves, hairnets, aprons, hats, and/or face masks) during meal periods, before
5 the start of a scheduled shift, and/or after completing a scheduled shift, resulting in the
6 underpayment of wages owed to Aggrieved Employees.

7 32. Based on information and belief, DEFENDANTS required Aggrieved Employees to
8 be at their assigned workstations at the start of a scheduled shift, thereby forcing Aggrieved
9 Employees to bestow their personal items in the employee storage area prior to clocking in for the
10 start of their shifts and/or had to gather work-related equipment and/or safety gear, make any
11 necessary adjustments to tools/equipment and/or perform maintenance/cleaning tasks, don work
12 clothing/uniforms and/or protective equipment, and/or complete other work tasks prior to their
13 scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock
14 work.

15 33. Based on information and belief, at times, Aggrieved Employees were required to
16 stand in line behind other employees to access DEFENDANTS' time-keeping system and/or were
17 required to spend time initiating and/or reinitiating DEFENDANTS' time-keeping system before
18 they could clock in for the start of their shifts and/or after completing a purported meal period.
19 Based on information and belief, Aggrieved Employees were required to complete other off-the-
20 clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal
21 periods, resulting in off-the-clock work and the underpayment of minimum and overtime wages
22 owed to Aggrieved Employees.

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

1 35. PLAINTIFF and other Aggrieved Employees were required to perform other off-the-
2 clock work for which they were not compensated. For example, based on information and belief,
3 at times, DEFENDANTS' biometric/electronic employee time-keeping system malfunctioned such
4 that Aggrieved Employees were required to either reinitiate and/or otherwise troubleshoot the
5 system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts
6 and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of
7 wages owed to Aggrieved Employees. Based on information and belief, Aggrieved Employees
8 experienced the same issues when clocking out for shifts and/or back in for meal periods. This time
9 spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid
10 minimum wages owed to Aggrieved Employees.

11 36. Moreover, based on information and belief, Aggrieved Employees who opened their
12 work locations were required to first unlock the doors, turn on all the lights in the restaurant/facility
13 and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work
14 and the underpayment of wages owed to Aggrieved Employees. Based on further information and
15 belief, Aggrieved Employees in charge of closing their location(s) were required to first clock out
16 for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the
17 doors. This resulted in additional off-the-clock post-shift work that was not compensated and the
18 underpayment of wages owed to Aggrieved Employees.

19 37. 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 38. Based on information and belief, at times, DEFENDANTS require/required
23 Aggrieved Employees to travel between DEFENDANTS' hotels/restaurants, facilities and/or
24 locations without compensating Aggrieved Employees for the travel time. For example, based on
25 information and belief, due to scheduling issues and/or understaffing, Aggrieved Employees were
26 at times required after working at their scheduled facility location to cover a shift at another of
27 DEFENDANTS' hotels/restaurants/facilities/locations but were not compensated for the time spent
28 driving to the second restaurant/facility, resulting in the underpayment of minimum and overtime

1 wages owed to Aggrieved Employees.

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

7 40. Moreover, based on information and belief, DEFENDANTS failed to pay
8 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split
9 shifts during the relevant period.

10 41. For example, based on information and belief, at times, DEFENDANTS required
11 PLAINTIFF and/or other Aggrieved Employees to work two separate shifts in the same day. Based
12 on information and belief, DEFENDANTS failed to pay PLAINTIFF and/or other Aggrieved
13 Employees split shift compensation whenever PLAINTIFF's and/or other Aggrieved Employees'
14 work schedules were interrupted by non-paid non-working periods established by DEFENDANTS,
15 which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage
16 orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be
17 paid in addition to the minimum wage for that workday...). See, also, Cal. Code Regs. Tit. 8, §
18 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid
19 in addition to the minimum wage for that workday, except when the employee resides at the place
20 of employment). DEFENDANTS also failed to separately itemize these split shift premium wages
21 on PLAINTIFF's and/or other Aggrieved Employees' wage statements, in violation of Labor Code
22 sections 510, 1194 and all applicable IWC Wage Orders. See,
23 https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on
24 the pay stub provided to the employee, and it should be shown as a separate category such as "Split
25 Shift Premium" and should not be lumped into another category such as wages, bonus, etc.
26 DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF
27 and/or other Aggrieved Employees on their wage statements.

28 42. Based on information and belief, DEFENDANTS failed to pay Aggrieved

1 Employees for time they were required to spend completing orientation, policy questionnaires,
2 and/or time spent completing the onboarding process including but not limited to reviewing various
3 documents and policies provided by DEFENDANTS. Based on information and belief, this work time
4 was completed off-the-clock and was not compensated.

5 43. Based on information and belief, DEFENDANTS implemented a time-rounding
6 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
7 compensable time because the time-rounding system implemented by DEFENDANTS would
8 almost always, if not always, result in understating actual compensable work time.

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

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

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

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

1 48. **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 49. 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 Claimant was at times interrupted during purported meal periods and/or had meal periods cut short
13 and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties.

14 50. Based on information and belief, Aggrieved Employees were restricted to the
15 worksite premises during unpaid, purportedly off-duty meal periods, and as such, were not relieved
16 of all duties and DEFENDANTS' control during unpaid meal periods, resulting in denied meal
17 periods and unpaid wages.

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

23 52. Based on information and belief, DEFENDANTS implemented policies and/or
24 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
25 during unpaid meal periods.

26 53. Based on information and belief, DEFENDANTS required Aggrieved Employees to
27 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
28 into account when scheduling meal periods for Aggrieved Employees. Based on information and

1 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

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

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

10 56. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
11 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
12 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
13 did DEFENDANTS have any sort of compliant policy in practice.

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

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

24 59. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
25 additional hour of wages at their respective regular rates of compensation for each workday a lawful
26 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
27 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
28 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,

1 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
2 compensation for purposes of calculating the owed meal period premium.

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

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

11 **62.** Based on information and belief, DEFENDANTS did not have a have a compliant
12 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
13 practice.

14 **63.** For example, based on information and belief, PLAINTIFF was at times, unable to
15 take compliant rest periods due to PLAINTIFF's need to complete assigned job duties and/or was
16 unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods
17 restricted to DEFENDANTS' premises.

18 **64.** For example, PLAINTIFF was frequently if not always unable to take her owed rest
19 periods due to the need to complete assigned job duties.

20 **65.** Also, based on information and belief, PLAINTIFF was restricted to the worksite
21 premises during any rest periods and as such was not relieved of all duties and DEFENDANTS'
22 control during any rest periods in violation of California rest period law.

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

27 **67.** Moreover, based on information and belief, DEFENDANTS failed to provide any
28 form of a third rest period on shifts lasting longer than ten hours.

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

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

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

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

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

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

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

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

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

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

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

27 79. Moreover, based on information and belief, DEFENDANTS issued wage statements
28 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among

1 other things, failing to list the correct name and/or address of the legal entity that is the employer,
2 in violation of Labor Code section 226(a)(8).

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

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

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

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

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

22 85. **Failure to Produce Employment Records.** Based on information and belief,
23 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
24 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
25 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
26 counsel, sent a written request for payroll and personnel records to DEFENDANTS on or around
27 including but not limited to the following dates: September 6, 2023, and October 31, 2023. Yet,
28 DEFENDANTS failed to timely produce complete records within the time periods delineated by

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

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

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

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

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

1 limited to receiving and responding to work-related messages and/or phone calls.

2 90. For example, on information and belief, Aggrieved Employees received
3 calls/messages to their personal cell phones/mobile devices from supervisors and/or other
4 Aggrieved Employees regarding scheduling and/or other work tasks but were not provided any
5 and/or full reimbursement from DEFENDANTS for this personal cell phone use.

6 91. Based on information and belief, Aggrieved Employees were not reimbursed for the
7 cost of using their personal phone for work related purposes and/or the cost of purchasing and/or
8 maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

9 92. For example, based on information and belief, Aggrieved Employees were not
10 reimbursed for the costs of purchasing and/or maintaining work uniforms/work clothing/work shoes,
11 personal protective/safety gear, such as, but not limited to, face masks, gloves, hairnets and/or work
12 shoes.

13 93. For example, PLAINTIFF was required to purchase non-slip shoes and
14 uniforms/work clothing in a specific color and/or of a specific brand without receiving any and/or
15 full reimbursement from DEFENDANTS for the expenses PLAINTIFF incurred in having to
16 purchase and/or maintain his own uniforms/work clothing/work shoes DEFENDANTS required
17 PLAINTIFF wear for work.

18 94. Based on information and belief, at times, DEFENDANTS required Aggrieved
19 Employees to use their personal vehicles for work without reimbursing them for the personal vehicle
20 expenses they incurred in connection therewith.

21 95. For example, based on information and belief, at times, DEFENDANTS required
22 Aggrieved Employees to travel from one of DEFENDANTS' facilities/restaurants to a second of
23 DEFENDANTS' facilities/restaurants for work and/or otherwise required Aggrieved Employees to
24 use their personal vehicles to carry out their assigned job duties without reimbursing Aggrieved
25 Employees for the expenses incurred in connection with DEFENDANTS' business use of their
26 personal vehicles.

27 96. As explained above, based on information and belief, Aggrieved Employees were
28 not reimbursed for the cost of using their personal phone for work related purposes and/or the cost

1 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
2 protective/safety gear.

3 97. Based on information and belief, DEFENDANTS regularly failed to reimburse and
4 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
5 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
6 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
7 assigned by DEFENDANTS.

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

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

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

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

27 102. Based on information and belief, DEFENDANTS have a policy and practice of
28 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,

1 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
2 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
3 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

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

8 104. 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, PLAINTIFF and/or other Aggrieved Employees were
12 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
13 violation of California law, including but not limited to Labor Code Section 551.

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

24 106. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
25 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
26 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
27 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
28 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.

1 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
2 used sick leave and the balance of paid sick leave.

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

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

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

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

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

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

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

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

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

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

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

20 116. **Violation of Labor Code section 351 and 353.** Labor Code Section 351 prohibits
21 employers and their agents from sharing in or keeping any portion of a gratuity left for or given to
22 one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions
23 from gratuities, or from using gratuities as direct or indirect credits against an employee's
24 wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities
25 received.

26 117. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
27 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
28 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor

1 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
2 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
3 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
4 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
5 Labor Code section 351.

6 118. Based on information and belief, DEFENDANTS charges an additional service
7 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
8 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
9 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
10 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
11 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
12 constitute a gratuity that is intended to the employees providing the service).

13 119. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period
14 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
15 they experienced within the statutory period, and \$200 per pay period for each additional violation.

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

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

28 122. Upon separation of employment, Aggrieved Employees' final paychecks were not

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

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

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

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

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

25 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

1 unlawful releases and/or waivers, including but not limited to, unlawful meal period waivers,
2 unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful
3 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
4 violation of Labor Code section 432.5.

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

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

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

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

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

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

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

14 Unlawful Inquires into Criminal History

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

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

24 Unlawful PAGA Waiver

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

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

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

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

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

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

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

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

27 **Failure to Keep Accurate Records**

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

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

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

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

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

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

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

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

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

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

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

18 **Meal Period Violations**

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

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

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

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

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

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

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

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

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

1 violation of California's meal period laws.

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

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

12 **Rest Period Violations**

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

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

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

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

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

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

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

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

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

3 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

22 **Minimum and Overtime Wage Violations**

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

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

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

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

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

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

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

26 177. Based on information and belief, DEFENDANTS failed to pay twice Aggrieved
27 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
28 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in

1 violation of California's overtime laws.

2 178. Based on information and belief, DEFENDANTS further violated California's
3 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
4 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
5 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
6 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
7 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
8 other Aggrieved Employees.

9 179. For example, based on information and belief, Aggrieved Employees earned non-
10 discretionary bonuses/incentive pay, shift differential pay and/or other non-discretionary
11 compensation during pay periods in which they worked overtime, yet DEFENDANTS failed to
12 incorporate all non-discretionary compensation into the regular rate(s) used to calculate the owed
13 overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to
14 Aggrieved Employees.

15 180. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
16 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
17 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
18 Wage Orders, section 20.

19 **Statutory Wage Violations**

20 181. California Labor Code section 223 makes it unlawful for an employer to secretly pay
21 wages lower than required by statute while purporting to pay legal wages. As described above,
22 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
23 earned minimum and overtime compensation for all hours worked which resulted in the payment of
24 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
25 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
26 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
27 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
28 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved

1 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
2 Labor Code § 2699(f)-(g).

3 **Refusal to Make Payment**

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

12 **Standard Conditions of Labor Violations**

13 183. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
14 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
15 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
16 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
17 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
18 seating, suitable resting, reporting time pay, split shift premiums, minimum/overtime wages and
19 other violations described herein result in separate violations of sections 1198 and 1199, which
20 subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

21 **Business Expense Violations**

22 184. California law requires employers to indemnify their employees for all necessary
23 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
24 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
25 Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary
26

27 ² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees
2 incurred by the employee enforcing the rights granted by this section."

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

11 186. Further, "any contract or agreement, express or implied, made by any employee to
12 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
13 any employee or his personal representative of any right or remedy to which he is entitled to under
14 the laws of this State." *See* Cal. Lab. Code section 2804.

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

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

21 189. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and other Aggrieved
22 Employees have suffered injury in that they were not completely reimbursed as mandated by
23 California law.

24 190. DEFENDANTS' failure to provide PLAINTIFF and the Aggrieved Employees with
25 full reimbursement for all reasonable expenses associated with carrying out their duties required
26 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
27 expenses in violation of Labor Code section 2802.

28 191. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved

1 Employees have suffered injury in that they were not completely reimbursed as mandated by
2 California law.

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

7 **Wage Statement Violations**

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

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

25 195. Moreover, due to violations detailed above, including but not limited to,
26 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
27 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
28 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish

1 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
2 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
3 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
4 compensation earned during the pay period into the regular rate of pay for purposes of calculating
5 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
6 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

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

24 200. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
25 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
26 Employees over whether they received all wages owed to them.

27 201. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
28 they could not easily determine whether they received all wages owed to them and whether they

1 were paid for all hours worked.

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

5 203. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
6 Aggrieved Employees with accurate, itemized wage statements.

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

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

19 **Unlawful Deductions.**

20 206. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
21 an employee any part of wages theretofore paid by said employer to said employee." Based on
22 information and belief, DEFENDANTS made unlawful deductions from Aggrieved Employees
23 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
24 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
25 Section 2699.

26 207. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
27 each pay period during which the statute provisions were violated. See Lab. Code §225.5

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

1 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
2 provided in this article, every person who unlawfully withholds wages due any employee in
3 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
4 to pay each employee”).

5 **Reporting Time Pay Violations.**

6 208. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

25 **Violation of California Day of Rest Law.**

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

1 the foregoing sections is a misdemeanor.

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

8 **Seating Violations**

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

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

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

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

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

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

26 218. Moreover, based on information and belief, the nature of the work reasonably
27 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
28 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of

1 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
2 of seats would not interfere with the performance of their duties.

3 219. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
4 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
5 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
6 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
7 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
8 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
9 Aggrieved Employee, results in a separate civil penalty.

10 **Violation of Labor Code section 351 and 353.**

11 220. Labor Code Section 351 prohibits employers and their agents from sharing in or
12 keeping any portion of a gratuity left for or given to one or more employees by a patron.
13 Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using
14 gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353
15 mandates employers to keep accurate records of all gratuities received.

16 221. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
17 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
18 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
19 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
20 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
21 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
22 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
23 Labor Code section 351.

24 222. Based on information and belief, DEFENDANTS charges an additional service
25 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
26 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
27 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
28 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*

1 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
2 constitute a gratuity that is intended to the employees providing the service).

3 223. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period
4 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
5 they experienced within the statutory period, and \$200 per pay period for each additional violation.

6 **Sick Leave Violations**

7 224. DEFENDANTS violated California's paid sick leave laws including, Labor Code
8 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
9 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
10 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
11 incorporate multiple rates of pay and/or all forms of 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.

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

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

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

27 228. Upon information and belief, DEFENDANTS failed and continue to fail to comply
28 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with

1 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
2 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
3 wages.

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

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

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

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

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

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

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

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

1 discretionary compensation, including but not limited to, shift differentials) to Aggrieved
2 Employees upon separation of employment, in violation of California law, including but not limited
3 to, Labor Code section 227.3.

4 **Untimely Payment of Final Wages**

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

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

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

26 238. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
27 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
28 256.

1 **Violation of Labor Code Section 208**

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

6 240. Based on information and belief, DEFENDANTS have a policy and practice of
7 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
8 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
9 office or agency of DEFENDANTS in the county where the work was performed, in violation of
10 Labor Code Section 208.

11 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

12 241. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
13 require any employee or applicant for employment to agree, in writing, to any term or condition
14 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
15 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
16 conditions of employment including but not limited to, unlawful non-solicitation/non-compete
17 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
18 waivers, including but not limited to, unlawful meal period waivers, unlawful forum selection
19 clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial
20 checks as a condition of obtaining and/or continuing employment in violation of Labor Code section
21 432.5.

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

1 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
2 background check, including but not limited to identifying an appropriate reason for the background
3 check, a separate consent form with required disclosures and certain formatting requirements,
4 additional forms such as a summary of rights, a way by which to request a copy of the report, as
5 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

23 Unlawful Inquires into Criminal History

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

28 249. Upon information and belief, DEFENDANTS, in violation of California law,

1 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
2 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
3 employment and/or otherwise impermissibly inquired into criminal history on its employment
4 application in violation of California law.

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

10 Unlawful PAGA Waiver

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

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

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

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

1 violation of labor code section 432.5.

2 255. Under the provisions of PAGA and the above mentioned Labor Code sections,
3 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
4 226.7, 245-248.6, 256, 351, 353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
5 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as
6 all interpretations of these laws by California Courts and administrative bodies, as well as any other
7 law that is enforceable through PAGA, DEFENDANTS are liable for the following 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.

17 256. 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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1 **PRAYER FOR RELIEF**

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

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

12 Dated: November 13, 2023

CROSNER LEGAL, PC

13
14 By: _____



15 Jamie K. Serb, Esq.
16 Brandon Brouillette, Esq.
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18 Attorneys for Plaintiff
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