

1 BRANDON BROUILLETTE, ESQ. (SBN 273156)
2 bbrouillette@crosnerlegal.com
3 ZACHARY M. CROSNER, ESQ. (SBN 272295)
4 zach@crosnerlegal.com
5 CROSNER LEGAL, PC
6 9440 Santa Monica Blvd. Suite 301
7 Beverly Hills, CA 90210
8 Tel: (866) 276-7637
9 Fax: (310) 510-6429

10 Attorneys for Plaintiffs FERNANDO TELLEZ and MARCO OLASABA,
11 on behalf of the State of California all Aggrieved Employees

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SANTA CLARA**

14 FERNANDO TELLEZ and MARCO
15 OLASABA, on behalf of the State of
16 California and all Aggrieved Employees,

17 Plaintiffs,

18 v.

19 LITHIA MOTORS, INC., an Oregon
20 Corporation; LAD-MB, LLC, a California
21 Limited Liability Company; and DOES 1-
22 100, inclusive,

23 Defendants.

Case No.: **24CV431228**

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

1 Plaintiffs, FERNANDO TELLEZ and MARCO OLASABA, (“PLAINTIFFS”), on behalf
2 of the State of California and all Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants LITHIA MOTORS, INC., an Oregon Corporation; LAD-MB, LLC,
4 a California Limited Liability Company; and DOES 1-100, inclusive, (collectively referred to herein
5 as “DEFENDANTS”). PLAINTIFFS are informed and believe and thereon allege as follows:

6 **INTRODUCTION**

7 1. This is a representative action filed by PLAINTIFFS on behalf of all Aggrieved
8 Employees and the State of California against DEFENDANTS, pursuant to California’s Private
9 Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties (75%
10 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 PLAINTIFFS’ 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 Santa Clara pursuant to sections 395 and 395.5 of
16 the California Code of Civil Procedure because DEFENDANTS transact business within this
17 judicial district, DEFENDANTS operate locations within this judicial district, and conduct alleged
18 by PLAINTIFFS herein occurred in this this judicial district. See also *Crestwood Behavioral Health,*
19 *Inc. v. Superior Court* (2021) 60 Cal. App. 5th 1069 (venue in a PAGA action is proper in any
20 county where the defendants committed Labor Code violations against some of its employees).
21 Venue is also proper pursuant to section 393 of the California Code of Civil Procedure because the
22 cause, or some part of the cause, arose in the County of Santa Clara.

23 **THE PARTIES**

24 4. PLAINTIFFS are, and at all relevant times, were individuals domiciled in the State
25 of California and a citizen of the State of California.

26 5. PLAINTIFFS are former employees of DEFENDANTS. PLAINTIFFS worked for
27 DEFENDANTS as non-exempt employees.

28 6. PLAINTIFF FERNANDO TELLEZ (“PLAINTIFF TELLEZ”) worked for

1 DEFENDANTS as a non-exempt employee with a job title of lot attendant and/or, car detailer and/or
2 or a similar title(s) and/or job position(s) from on or around May 2, 2019, through on or around
3 March 8, 2023.

4 7. PLAINTIFF TELLEZ worked for DEFENDANTS at DEFENDANTS' Los Angeles,
5 California location(s), which operated/operates under the name Mercedes-Benz of Los Angeles.
6 PLAINTIFF TELEZ regularly worked at least eight (8) hours per day hours, least five (5) days per
7 week.

8 8. PLAINTIFF MARCO OLASABA ("PLAINTIFF OLASABA") worked for
9 DEFENDANTS as a non-exempt employee with a job title of cashier and/or a similar title(s) and/or
10 job position(s) from in or around May 2023, through in or around October 2023. PLAINTIFF
11 OLASABA worked for DEFENDANTS at DEFENDANTS' Van Nuys, California location(s),
12 which operated/operates under the name(s): "Keyes Toyota" and/or "Keyes Toyota in Van Nuys".
13 PLAINTIFF OLASABA regularly worked at least eight (8) to eleven (11) hours per day.

14 9. Defendant LITHIA MOTORS, INC. is an Oregon Corporation that, at all relevant
15 times, was authorized to do business within the State of California and is doing business in the State
16 of California.

17 10. Defendant LAD-MB, LLC is a California Limited Liability Company that, at all
18 relevant times, was authorized to do business within the State of California and is doing business in
19 the State of California.

20 11. DEFENDANTS own, operate, manage and/or staff its employees to work at the
21 dealerships and/or facilities and/or other location(s) in California, including but not limited to the
22 dealerships, auto stores, and/or facilities in cities throughout California. DEFENDANTS do
23 business under and/or operate under brand names, including but not limited to, "Lithia Motors, Inc."
24 and/or "Lithia Motors" and/or "Lithia driveway," and/or "driveway" and/or various automobile
25 makes and/or brand names. DEFENDANTS are one of the largest United States automotive group
26 retailers with more than 200 locations in at least eighteen (18) states, with at least thirty (30)
27 dealerships, auto stores and/or other facilities located in cities throughout California, including but
28 not limited to, locations in Santa Clara County. DEFENDANTS, through its various locations and

1 business operations serve the automotive industry.¹

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

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

18 **JOINT LIABILITY**

19 14. Under California law, the definition of the terms “to employ” are broadly construed
20 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
21 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
22 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
23 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
24 was to reach situations in which multiple entities control different aspects of the employment
25 relationship. Supervision of the work, in the specific sense of exercising control over how services
26 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
27 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a

28 ¹ See <https://www.lithia.com/locations/store-locations.htm>. Last visited on February 8, 2024.

1 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
2 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
3 California, applying a less stringent standard to what constitutes sufficient control by a business
4 over its vendor's employees' wages and working conditions to render that business liable as a joint
5 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); "[i]f the putative
6 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
7 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
8 employment," *Id.* at 875 [emphasis added].

9 15. During PLAINTIFFS' employment by DEFENDANTS, PLAINTIFFS and other
10 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of
11 the Wage Orders, under the alternative definitions of "to employ" adopted by the California
12 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
13 over wages, hours and working conditions of PLAINTIFFS and Aggrieved Employees; (2) suffered
14 or permitted PLAINTIFFS and Aggrieved Employees to work for them; and (3) engaged
15 PLAINTIFFS and Aggrieved Employees to work for them.

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

1 17. PLAINTIFFS are informed and believe, and thereon alleges that at all times relevant
2 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFFS and Aggrieved
3 Employees upon whose behalf PLAINTIFFS brings these allegations and cause of action, in that
4 DEFENDANTS, exercised sufficient control over PLAINTIFFS and the Aggrieved Employees'
5 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
6 considered the joint employers of PLAINTIFFS and Aggrieved Employees.

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

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

26 20. PLAINTIFFS are informed and believe that DEFENDANTS exercised the same
27 control over, applied the same policies and practices, and engaged in the same acts and omissions
28 with regard to the other Aggrieved Employees.

21. PLAINTIFFS are informed and believe and hereon alleges that DEEFENDANTS must be classified as joint employers of Aggrieved Employees for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFFS to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of Aggrieved Employees at all relevant times herein, so as to be considered the joint employers of Aggrieved Employees.

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

PAGA ALLEGATIONS

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

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

24. PLAINTIFFS are each an “aggrieved employee,” as that term is defined under Labor Code section 2699(c), as PLAINTIFFS were each employed by DEFENDANTS during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, PLAINTIFFS seek to recover on behalf of the State of California, and all Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFFS have standing to bring a PAGA cause of action on behalf of the State and all Aggrieved Employees, as PLAINTIFFS were jointly employed by DEFENDANTS and are thereby affected by one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known

1 violations committed by the employer – regardless of whether Plaintiff experienced all violations
2 personally. *Id.* at 760-761.

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

4 25. PLAINTIFF TELLEZ, on October 27, 2023, through counsel, gave written notice by
5 online filing with the California Labor and Workforce Development Agency (“LWDA”) informing
6 it that DEFENDANTS failed to comply with California’s labor laws with regard to the allegations
7 alleged in this Complaint (“Tellez PAGA Notice”).

8 26. On November 21, 2023, PLAINTIFF OLASABA through counsel, gave written
9 notice by online filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that DEFENDANTS failed to comply with California’s labor laws with regard to the
10 allegations alleged in this Complaint (“Olasaba PAGA Notice”).

11 27. The Tellez PAGA Notice and Olasaba PAGA Notice outlined PLAINTIFFS’ claims
12 for violations of the California Labor Code and the applicable wage orders on behalf of
13 PLAINTIFFS, the State of California and all Aggrieved Employees.

14 28. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
15 violations after expiration of the 65-day waiting time period(s), or at any time. To the extent any of
16 the alleged violations were curable, DEFENDANTS failed to cure within the time allotted by
17 PAGA. PLAINTIFFS have exhausted the administrative remedies as required by Labor Code
18 section 2699.3. Consequently, PLAINTIFFS’ right to file the instant lawsuit has duly accrued.

19 29. PLAINTIFFS seek to recover the PAGA civil penalties through a representative
20 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
21 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

22 **FACTUAL ALLEGATIONS**

23 30. During the relevant period, PLAINTIFFS, and each of the Aggrieved Employees,
24 worked for DEFENDANTS in the State of California. At all times referenced herein,
25 DEFENDANTS exercised control over PLAINTIFFS and Aggrieved Employees, and suffered
26 and/or permitted them to work.

27 31. PLAINTIFF TELLEZ is a former employee of DEFENDANTS. PLAINTIFF

1 TELLEZ worked for DEFENDANTS as a non-exempt employee with a job title of lot attendant
2 and/or, car detailer and/or or a similar title(s) and/or job position(s) from on or around May 2, 2019,
3 through on or around March 8, 2023.

4 32. PLAINTIFF TELLEZ worked for DEFENDANTS at DEFENDANTS' Los Angeles,
5 California location(s), which operated/operates under the name Mercedes-Benz of Los Angeles.
6 PLAINTIFF TELEZ regularly worked at least eight (8) hours per day hours, least five (5) days per
7 week days per week.

8 33. PLAINTIFF OLASABA is a former employee of DEFENDANTS. PLAINTIFF
9 worked for DEFENDANTS as a non-exempt employee with a job title of cashier and/or a similar
10 title(s) and/or job position(s) from in or around May 2023, through in or around October 2023.

11 34. PLAINTIFF OLASABA worked for DEFENDANTS at DEFENDANTS' Van Nuys,
12 California location(s), which operated/operates under the name(s): "Keyes Toyota" and/or "Keyes
13 Toyota in Van Nuys". PLAINTIFF OLASABA regularly worked at least eight (8) to eleven (11)
14 hours per day.

15 35. At all relevant times, PLAINTIFFS were non-exempt employees that were paid on
16 an hourly basis for time counted by DEFENDANTS as hours worked.

17 36. Based on information and belief, Aggrieved Employees were also compensated with
18 bonuses/incentive pay, spiffs and/or commissions, including but not limited to, bonuses and/or
19 commissions for repairs completed and/or parts sold and/or piece rate pay and/or were compensated
20 with other non-discretionary remuneration.

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

28 38. Based on information and belief, DEFENDANTS implemented a policy and/or

1 practice of rounding meal period start and end times and/or automatically deducting at least thirty
2 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
3 PLAINTIFFS and other Aggrieved Employees were subject to DEFENDANTS' control during
4 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
5 PLAINTIFFS and Aggrieved Employees of all wages owed.

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

10 40. For example, based on information and belief, Aggrieved Employees were required
11 to complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-
12 related phone calls and/or messages they received to their phones and were required to respond to,
13 including but not limited to, communications from supervisors and/or other Aggrieved Employees
14 regarding scheduling and/or other work tasks, resulting in the underpayment of minimum and
15 overtime wages owed to Aggrieved Employees.

16 41. For example, PLAINTIFF OLASABA was consistently required to respond to work-
17 related phone calls and/or messages including but not limited to, at least approximately twice per
18 week on PLAINTIFF OLASABA's scheduled days off and/or otherwise outside of his scheduled
19 shift start times, with each work-related phone resulting in at least approximately several minutes
20 off-the-clock work and the underpayment of wages owed to PLAINTIFF OLASABA. For example,
21 at least approximately twice per week, PLAINTIFF OLASABA's supervisors would call
22 PLAINTIFF OLASABA outside of his scheduled shift times to discuss work-related matters, such
23 as but not limited to, customer orders and/or other work-related tasks, however, DEFENDANTS
24 did not compensate PLAINTIFF OLASABA at all for this time spent under DEFENDANTS'
25 control.

26 42. Based on information and belief, DEFENDANTS suffered, permitted, explicitly
27 instructed and/or otherwise required Aggrieved Employees to perform pre-shift and/or post-shift
28 off-the-clock work, such as but not limited to, contacting prospective customers/customers,

1 completing paperwork and/or data entry, cleaning and/or setting up DEFENDANTS' facilities
2 and/or show room(s), making and/or responding to work-related communications and/or completing
3 other off-the-clock work tasks that were neither recorded nor compensated, resulting in
4 DEFENDANTS' failure to pay Aggrieved Employees for all hours worked and the underpayment
5 of minimum wages and overtime wages owed to Aggrieved Employees.

6 43. Based on information and belief, prior to beginning a scheduled shift, Aggrieved
7 Employees were required to start and/or boot all of DEFENDANTS' computer systems, phone
8 systems / applications and/or software so as to have all systems running at the start of the scheduled
9 shift. As such, based on information and belief, Aggrieved Employees at times spent at least 10-15
10 minutes before each scheduled shift preparing and/or troubleshooting different work applications in
11 order to clock in and begin their shifts. This pre-shift work was off-the-clock and uncompensated
12 resulting in unpaid minimum and overtime wages.

13 44. Based on information and belief, at times, DEFENDANTS' electronic employee
14 time-keeping system/app malfunctioned such that Aggrieved Employees were required to either
15 reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable
16 to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-
17 the-clock work and the underpayment of wages owed to Aggrieved Employees. Based on
18 information and belief, Aggrieved Employees experienced the same issues when clocking out for
19 shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not
20 recorded and not compensated and resulted in unpaid minimum wages owed to Aggrieved
21 Employees.

22 45. Based on information and belief, DEFENDANTS did not compensate Aggrieved
23 Employees for all time spent donning and doffing personal protective equipment, safety equipment
24 and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses and/or face masks) during meal
25 periods, before the start of a scheduled shift, and after completing a scheduled shift, resulting in
26 DEFENDANTS' failure to pay Aggrieved Employees for all work time and the underpayment of
27 minimum wages and overtime wages owed to Aggrieved Employees.

28 46. Based on information and belief, Aggrieved Employees were required to undergo

1 security screenings and/or other mandated screenings before and/or after a scheduled shift and/or
2 before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.

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

6 48. Based on information and belief, at times, Aggrieved Employees were required to
7 complete other work tasks outside of their reported work time, before clocking in for the start of
8 their shift and/or after clocking out for the end of their shift and/or otherwise outside of their
9 scheduled shift times resulting in DEFENDANTS' failure to compensate Aggrieved Employees for
10 all hours worked and the underpayment of minimum wages and overtime wages to Aggrieved
11 Employees.

12 49. Based on information and belief, at times, DEFENDANTS instituted a piece-rate-
13 based compensation scheme that resulted in pay periods during which Aggrieved Employees were
14 denied the minimum wage for all hours worked. For example, on information and belief, at times,
15 DEFENDANTS paid Aggrieved Employees on a strictly commission and/or piece-rate basis (e.g.,
16 per repair/service job and/or sale completed and/or using a flagged hour basis), at least during some
17 pay periods, during the relevant time period. However, based on information and belief,
18 DEFENDANTS failed to separately compensate Aggrieved Employees for all non-piece rate related
19 activities/all non-productive time, including but not limited to, all rest breaks and/or time spent
20 preparing/setting up for jobs, time spent completing paperwork, waiting between jobs and tasks
21 and/or other waiting time, and/or performing work duties that otherwise fall outside of the piece-
22 rate pay criteria. DEFENDANTS' failure to separately compensate Aggrieved Employees for their
23 rest periods and/or other non-productive time and/or failure to compensate them at the correct rates
24 for all non-productive time including rest periods resulted in the failure to pay Aggrieved Employees
25 for all hours worked and violations of California wage and hour laws, including but not limited to,
26 Labor Code sections 226.2 and/or 1197. Based on information and belief, DEFENDANTS further
27 failed to include this information on these employees' wage statements required by Labor Code
28 section 226.2.

1 50. Based on information and belief, DEFENDANTS failed to pay Aggrieved
2 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
3 Employee worked in California. For example, based on information and belief, DEFENDANTS
4 failed to pay Aggrieved Employees who performed at least two (2) hours of work within the city of
5 Los Angeles and/or within an unincorporated area of the county of Los Angeles, at the applicable
6 minimum wage rate(s) in effect for the city and/or county of Los Angeles, and as such failed to pay
7 all owed minimum wages. See Section 187.02(d) of the Los Angeles Municipal Code (increasing
8 the minimum wage rate, effective July 1, 2023, by \$.74 for a new minimum wage rate of \$16.78 per
9 hour) and Los Angeles County Minimum Wage Ordinance section 8.100.040 (increasing the
10 minimum wage rate for the unincorporated areas of Los Angeles to \$16.90 per hour).

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

1 Employees on their wage statements.

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

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

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

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

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

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

1 58. Based on further information and belief, DEFENDANTS failed to pay the applicable
2 minimum wage rate(s) in effect for the city and/or county in which the Aggrieved Employee worked,
3 which resulted in a failure to pay all owed overtime wages as the overtime rate was based on an
4 unlawful minimum wage rate. For example, based on information and belief DEFENDANTS failed
5 to pay the applicable minimum wage rate(s) in effect for the city and/or county of Los Angeles,
6 which resulted in a failure to pay all owed overtime wages owed to Aggrieved Employees as the
7 overtime rate was based on an unlawful minimum wage rate.

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

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

19 61. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
20 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS
21 to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC
22 Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in
23 a separate civil penalty, for each Aggrieved Employee, for each pay period during which the
24 referenced statutes and Wage Order provisions were violated.

25 62. **Meal Period Violations.** PLAINTIFFS and other Aggrieved Employees consistently
26 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
27 However, PLAINTIFFS and other Aggrieved Employees would not receive legally compliant thirty
28 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees

1 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
2 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
3 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
4 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
5 completely.

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

11 64. For example, PLAINTIFF OLASABA was frequently required to clock out for meal
12 periods but to continue working including but not limited to, when the dealership was busy, to
13 continue assisting customers and/or the sales and/or service departments and/or completing other
14 assigned job duties. For example, PLAINTIFF OLASABA's supervisor(s) frequently instructed
15 PLAINTIFF OLASABA to clock out before the fifth hour of work for at least a thirty-minute meal
16 period but to continue completing work tasks off-the-clock, including but not limited to, assisting
17 customers and/or the sales and/or service departments, resulting in denied meal periods as well as
18 unpaid wages owed to PLAINTIFF OLASABA.

19 65. Based on information and belief, Aggrieved Employees were required to monitor
20 their phone(s) and/or other work communication devices for and respond to work-related
21 communications during purportedly off-duty meal periods, resulting in meal period law violations
22 and unpaid wages. As such, Aggrieved Employees were frequently required to take interrupted
23 meal periods, cut their meal periods short and/or work through his unpaid meal periods completely.

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

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

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

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

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

16 71. For example, based on information and belief, when Aggrieved Employees worked
17 more than ten (10) and/or twelve (12) hours in a shift, they were not provided with any version of a
18 second meal period.

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

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

1 74. Based on information and belief, DEFENDANTS had actual and/or constructive
2 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods
3 that were free of DEFENDANTS' control owed to PLAINTIFFS and other Aggrieved Employees,
4 in violation of California's meal period laws.

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

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

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

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

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

27 80. For example, PLAINTIFFS were frequently if not always required to work through
28 their owed rest periods due to the need to complete their assigned job duties.

1 81. Also, based on information and belief, PLAINTIFFS and other Aggrieved
2 Employees were restricted to the worksite premises and/or were required to monitor work
3 communication devices during any rest periods, and as such, were not relieved of all duties and
4 DEFENDANTS' control during any rest periods, in violation of California rest period law.

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

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

11 84. Based on information and belief, DEFENDANTS implemented policies and/or
12 practices that failed to relieve PLAINTIFFS and other Aggrieved Employees of all duties and
13 DEFENDANTS' control during rest periods.

14 85. For example, based on information and belief, DEFENDANTS required Aggrieved
15 Employees to remain tethered to DEFENDANTS' premises and/or work communication devices
16 during any rest periods, in violation of California rest period law.

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

20 87. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
21 which PLAINTIFFS and other Aggrieved Employees experienced a missed/unlawful rest period in
22 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
23 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
24 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
25 shift differential pay, and/or other non-discretionary compensation into the regular rate of
26 compensation for purposes of calculating the owed rest period premium.

27 88. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC
28 Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the

1 Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the
2 toilet rooms and shall be available to employees during work hours.”

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

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

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

17 92. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
18 provide Aggrieved Employees with accurate wage statements that complied with Labor Code
19 section 226. As DEFENDANTS failed to provide Aggrieved Employees with meal and rest periods
20 that complied with Labor section 226.7, the wage statements DEFENDANTS issued to Aggrieved
21 Employees failed and continue to fail to correctly set forth the gross wages earned, the total hours
22 worked, the net wages earned, and all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee.

24 93. DEFENDANTS issued wage statements to Aggrieved Employees that also failed to
25 indicate the earned gross and net wages earned during the pay period, the correct applicable rates of
26 pay for all hours worked, and the total hours worked by Aggrieved Employees (by virtue of rounded
27 time entries, automatic deduction for meal periods/failure to relieve Aggrieved Employees of all
28 duties and employer control during unpaid meal periods, payment according to scheduled hours

1 worked rather than actual hours worked, and/or other off-the-clock work policies and practices
2 described above) which results in a violation of Labor Code section 226(a).

3 94. Separately, and independent of the above allegations, based on information and
4 belief, DEFENDANTS issued wage statements to Aggrieved Employees that failed to list the total
5 hours worked during the pay period, in violation of, including but not limited to, Labor Code section
6 226(a)(2).

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

11 96. For example, as explained herein, DEFENDANTS compensated Aggrieved
12 Employees with bonuses, incentive pay, spiffs, piece rate pay and/or commissions and/or other non-
13 discretionary remuneration yet failed to incorporate all non-discretionary remuneration into the
14 regular pay rate(s) used to calculate the owed overtime rate(s). As such, wage statements issued by
15 DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee, in violation of Labor
17 Code section 226(a)(9).

18 97. Based on information and belief, as to Aggrieved Employees compensated on a
19 piece-rate basis, DEFENDANTS failed, and continue to fail to issue accurate wage statements by
20 not documenting the total hours of compensable rest and/or recovery periods and/or for other non-
21 productive time, the rates of compensation for these hours, and the gross wages paid for these hours,
22 in violation of, including but not limited to California Labor Code section 226(a) and/or 226.2.

23 98. Based on information and belief, DEFENDANTS issued wage statements to
24 Aggrieved Employees that failed to list the number of piece-rate units earned and any and all
25 applicable piece rate(s), in violation of Labor Code Section 226(a)(3).

26 99. Moreover, based on information and belief, DEFENDANTS issued wage statements
27 to PLAINTIFFS and Aggrieved Employees that further violate Labor Code section 226(a), by
28 among other things, failing to list the correct name and/or address of the legal entity that is the

1 employer, in violation of Labor Code section 226(a)(8).

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

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

8 102. As a result, DEFENDANTS issued wage statements to PLAINTIFFS and Aggrieved
9 Employees that were not accurate and did not include all of the statutorily required information. As
10 such, DEFENDANTS violated Labor Code section 226.

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

19 104. **Failure to Produce Employment Records.** Based on information and belief,
20 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
21 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
22 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF OSALBA,
23 through counsel, sent a written request for time, pay and personnel records to DEFENDANTS on
24 including but not limited to, the following dates: November 22, 2023. However, DEFENDANTS
25 failed to timely produce PLAINTIFF OSALBA's complete time, pay and/or personnel records.
26 Based on information and belief, DEFENDANTS failed and continues to fail to timely produce
27 complete payroll and personnel records when requested by Aggrieved Employees. Based on
28 information and belief, DEFENDANTS failed and continue to fail to timely produce complete time,

1 pay, and personnel records when requested by other Aggrieved Employees.

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

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

15 107. **Failure to Provide Written Commission Agreements.** Labor Code section 2751
16 requires that all commission contracts "be in writing and . . . set forth the method by which the
17 commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute,
18 employers must also "give a signed copy of the contract to every employee who is a party [to the
19 contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section 2751(b).

20 108. Based on information and belief, DEFENDANTS failed to provide Aggrieved
21 Employees who were compensated on a commission basis with proper written commission
22 agreements, in violation of Labor Code section 2751.

23 109. **Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an
24 employer to pay employees compensated on a piece-rate basis separately for rest and recovery
25 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an
26 employer to include on the wage statements for these employees the total hours of compensable rest
27 and recovery period, the total hours for other non-productive time, the rates of compensation for
28 these hours, and the gross wages paid for these hours. In addition, the statute requires that employees

1 shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the
2 higher of: (i) an average hourly rate determined by dividing the total compensation for the
3 workweek, exclusive of compensation for rest and recovery periods and any premium compensation
4 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,
5 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to
6 employees compensated on a commission basis.

7 110. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
8 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
9 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
10 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
11 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
12 226.2.

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

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

27 113. Based on information and belief, DEFENDANTS charges an additional service
28 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to

1 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
2 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
3 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
4 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
5 constitute a gratuity that is intended to the employees providing the service).

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

9 115. **Unreimbursed Business Expenses.** Based on information and belief,
10 DEFENDANTS required Aggrieved Employees to incur business expenses as a direct consequence
11 of the performance of their job duties without providing reimbursement, in violation of Labor Code
12 section 2802. Based on information and belief, Aggrieved Employees were improperly required to
13 provide and maintain work tools that are supposed to be the responsibility of the employer.

14 116. Based on information and belief, DEFENDANTS shifted the costs of doing business
15 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
16 to, uniforms, work clothing/shoes, protective equipment/safety gear (e.g., gloves and/or face masks)
17 and/or the use of Aggrieved Employees' personal mobile phone and data usage for work-related
18 purposes, including but not limited to, receiving and responding to work related messages and/or
19 phone calls.

20 117. For example, based on information and belief, DEFENDANTS required Aggrieved
21 Employees, including but not limited to, PLAINTIFF TELLEZ, to download and regularly use
22 work-related application(s), including but not limited to, employee timekeeping applications,
23 without providing any and/or full reimbursement for the business expenses Aggrieved Employees
24 incurred in connection with being required to use their personal cell phone(s)/mobile device(s) for
25 work.

26 118. Also, based on information and belief, DEFENDANTS required Aggrieved
27 Employees to use their personal cell phones/mobile devices to make and/or respond to work-related
28 calls and/or messages without providing Aggrieved Employees with any and/or full reimbursement

1 for these business expenses. For example, PLAINTIFF OSALBA was consistently required to
2 respond to work-related phone calls at least approximately twice per week throughout his
3 employment, with each call lasting at least approximately several minutes. However,
4 DEFENDANTS failed to provide PLAINTIFF OSALBA with any reimbursement for the business
5 expenses PLAINTIFF incurred in connection with being required to use his personal cell
6 phone/mobile device to carry out his assigned job duties.

7 119. Based on information and belief, PLAINTIFFS and/or other Aggrieved Employees
8 also received work-related calls/messages to their personal phones from managers and/or
9 supervisors and/or other Aggrieved Employees regarding scheduling and other work tasks without
10 receiving any and/or full reimbursement from DEFENDANTS for these business expenses.

11 120. Moreover, based on information and belief, Aggrieved Employees also were required
12 to use and did use personal devices to perform work duties at home/remotely, such as, but not limited
13 to, reviewing and/or completing work-related paperwork and/or other documents as mandated by
14 DEFENDANTS, however DEFENDANTS failed to provide reimbursement / full reimbursement
15 for expenses Aggrieved Employees incurred as a result of working for DEFENDANTS remotely
16 and/or from their homes, including but not limited to, cost of internet service, home electricity, cost
17 of additional memory and/or virus software for home computer / home computer use, among other
18 business expenses associated with remote work required by DEFENDANTS.

19 121. Based on information and belief, Aggrieved Employees were not reimbursed for the
20 business use of their personal vehicles, including but not limited to, mileage, wear and tear, and/or
21 cost of fuel when they were required to drive between job sites/facilities and/or otherwise use their
22 personal vehicles for DEFENDANTS' business purposes. For example, based on information and
23 belief, at times, Aggrieved Employees were required to use their personal vehicles to drive between
24 DEFENDANTS' various facilities, offices and/or locations and/or otherwise use their personal
25 vehicles to carry out their assigned job duties but were not provided any and/or full reimbursement
26 for DEFENDANTS' business use of their personal vehicles. As such, DEFENDANTS failed to
27 compensate Aggrieved Employees at the Internal Revenue Service (IRS) mandated per mile
28 compensation rate for the relevant period.

1 122. Based on further information and belief, at times, Aggrieved Employees were at
2 times required to supply (purchase and/or maintain) their own hand tools and/or equipment they
3 required to perform their assigned job duties, however, they did not receive any and/or full
4 reimbursement from DEFENDANTS for the expenses incurred in connection therewith.

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

10 124. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
11 for all reasonable expenses associated with carrying out their duties required that Aggrieved
12 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
13 2802.

14 125. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
15 provides as follows:

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

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

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

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

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

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

26 132. Upon information and belief, DEFENDANTS further failed to place PLAINTIFFS
27 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
28 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,

1 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
2 Aggrieved Employees on their wage statements or other written statement. Moreover, based on
3 information and belief, DEFENDANTS failed to maintain accurate records of used sick leave and
4 the balance of paid sick leave.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

147. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

148. Based on information and belief, DEFENDANTS required Aggrieved Employees to agree in writing to unlawful conditions of employment including but not limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

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

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

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

28 153. Based on further information and belief, DEFENDANTS also required Aggrieved

1 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
2 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
3 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
4 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

8 155. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
9 condition of employment, DEFENDANTS violated Labor Code section 432.5.

10 Unlawful Inquires into Criminal History

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

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

20 Unlawful PAGA Waiver

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

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

1 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

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

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

12 162. **Violation of Labor Code Section 432.6.** Based on information and belief,
13 DEFENDANTS require/required Aggrieved Employees to waive their right to first and/or second
14 meal periods as a condition of working for DEFENDANTS in violation of California law.

15 163. As such, DEFENDANTS violated including but not limited to, Labor Code sections
16 432.6 and/or 432.5 by virtue of including but not limited to, requiring Aggrieved Employees to sign
17 invalid meal period waivers as a condition of employment and/or for threatening, retaliating and/or
18 discriminating against and/or terminating Aggrieved Employees because of their refusal to waive
19 their meal period rights.

20 164. PLAINTIFFS are informed and believe and allege thereon that DEFENDANTS
21 engaged in these same herein described unlawful practices, which led to violations of the California
22 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
23 unlawful practices to all of its employees that it applied to PLAINTIFFS.

24 165. PLAINTIFFS are informed and believe and allege thereon that DEFENDANTS
25 engaged in these same herein described unlawful practices, which led to violations of the California
26 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
27 unlawful practices to all of its employees that it applied to PLAINTIFFS.

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

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

166. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

Failure to Keep Accurate Records

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

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

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

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

170. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee’s dates of employment; the employee’s hourly rates

² Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil 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 and the corresponding number of hours worked by the employee at each hourly rate, when the
2 employee begins and ends each work period (including meal periods) and split intervals; total hours
3 worked by the employee; all deductions; gross wages earned; and net wages earned.

4 171. Section (b) of Labor Code section 226 further requires employers to “afford current
5 and former employees the right to inspect or receive a copy of records pertaining to their
6 employment upon reasonable request to the employer.” Section (c) of Labor Code section 226
7 provides that, “an employer who receives a written or oral request to inspect or receive a copy of
8 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
9 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
10 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
11 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
12 the employer. Lab. Code section 226(f).

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

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

26 **Meal Period Violations**

27 174. California law requires employers to provide employees a duty-free, uninterrupted
28 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and

1 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and
2 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
3 *Court* (2012) 53 Cal.4th 1004.

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

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

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

22 178. As explained above, Aggrieved Employees were consistently unable to take timely,
23 off duty, thirty-minute, uninterrupted first and second meal periods, often being forced to take late
24 meal periods, interrupted meal periods, and/or work through part or all of their meal periods due to
25 understaffing, the nature and constraints of their job duties, and/or commentary from supervisors
26 pressuring them to take non-compliant meal periods or skip meal periods completely.

27 179. Based on information and belief, DEFENDANTS had and continue to have a policy
28 of rounding the start and end times of employees’ meal periods and/or automatically deducting thirty

1 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFFS and
2 Aggrieved Employees did not receive compliant meal periods.

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

5 181. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS had
6 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
7 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
8 violation of California's meal period laws.

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

14 183. These unlawful meal period policies and practices result in violations of Labor Code
15 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
16 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
17 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
18 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

19 **Rest Period Violations**

20 184. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
21 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
22 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
23 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
24 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
25 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
26 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
27 1029). The rest period requirement obligates employers to permit and authorize employees to take
28 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control

1 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
2 257. If the employer fails to provide any required rest period, the employer must pay the employee
3 one hour of pay at the employee's regular rate of compensation for each workday the employer did
4 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
5 applicable IWC Wage Order, §12(B).

6 185. Moreover, under California law rest periods must be a "net" ten minutes in a suitable
7 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
8 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
9 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
10 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
11 which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what
12 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
13 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
14 "onus is on the employer to clearly communicate the authorization and permission [to take rest
15 periods] to its employees.").

16 186. PLAINTIFFS and the Aggrieved Employees did not receive legally compliant,
17 timely 10-minute rest periods for every four (4) hours worked or major fraction thereof. As
18 explained above, any purported rest periods were late, interrupted, cut short, on duty, and/or
19 otherwise subject to DEFENDANTS' control due to the nature and constraints of Aggrieved
20 Employees' job duties, understaffing, and/or commentary from supervisors pressuring
21 PLAINTIFFS and Aggrieved Employees to skip rest periods completely or otherwise take non-
22 compliant rest periods.

23 187. Based on information and belief, DEFENDANTS implemented policies and/or
24 practices that failed to relieve Aggrieved Employees of all duties and employer control during rest
25 periods. Based on further information and belief, Aggrieved Employees were pressured to complete
26 their work duties according to a designated schedule such that rest periods were only taken once
27 tasks were completed, and/or as time permitted.

28 188. As a result, PLAINTIFFS and Aggrieved Employees did not receive legally

1 compliant first, second, or third rest periods as required by California law.

2 189. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
3 period premium to Aggrieved Employees for each workday in which there was a missed or
4 otherwise unlawful rest period. Based on further information and belief, when a rest premium was
5 paid, DEFENDANTS failed to include non-discretionary compensation including but not limited
6 to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate
7 of compensation for purposes of determining the owed rest period premium.

8 190. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
9 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
10 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

11 **Failure to Provide Suitable Resting Facilities**

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

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

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

27 194. DEFENDANTS’ failure to provide suitable resting facilities to Aggrieved
28 Employees violated and continue to violate the applicable Wage Order, section 13(B) and the

1 California Labor Code, including but not limited to section 1198.

2 **Minimum and Overtime Wage Violations**

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

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

16 197. As explained above, DEFENDANTS violated California's minimum and overtime
17 wage laws by failing to compensate PLAINTIFFS and the Aggrieved Employees for all hours
18 worked by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for
19 shift start and end times and meal period start and end times), payment according to scheduled hours
20 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during
21 meal periods, and/or other otherwise off-the-clock work (described above), and/or other unlawful
22 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

23 198. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFFS
24 and Aggrieved Employees for all hours worked.

25 199. Based on information and belief, DEFENDANTS had actual or constructive
26 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
27 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and
28 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the

1 underpayment of minimum and overtime wages owed to Aggrieved Employees.

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

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

13 202. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
14 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
15 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
16 Wage Orders, section 20.

17 **Statutory Wage Violations**

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

28 **Refusal to Make Payment**

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

9 **Standard Conditions of Labor Violations**

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

18 **Failure to Provide Written Commission Agreements**

19 206. Labor Code section 2751 requires that all commission contracts "be in writing and .
20 . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code
21 section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract
22 to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract
23 from each employee." *Id.* section 2751(b).

24 207. Based on information and belief, DEFENDANTS failed to provide Aggrieved
25 Employees who were compensated on a commission basis with proper written commission

26 _____
27 ³ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 agreements, in violation of Labor Code section 2751.

2 **Violation of Labor Code Section 226.2.**

3 208. Labor Code section 226.2 requires an employer to pay employees compensated on a
4 piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any
5 piece-rate pay. This statute further requires an employer to include on the wage statements for these
6 employees the total hours of compensable rest and recovery period, the total hours for other non-
7 productive time, the rates of compensation for these hours, and the gross wages paid for these hours.
8 In addition, the statute requires that employees shall be compensated for rest and recovery periods at
9 a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by
10 dividing the total compensation for the workweek, exclusive of compensation for rest and recovery
11 periods and any premium compensation for overtime, by the total hours worked during the
12 workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case
13 law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

14 209. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
15 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
16 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
17 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
18 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
19 226.2.

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

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

26 211. 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.

6 212. 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).

13 213. 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 **Business Expense Violations**

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

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

1 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
2 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

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

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

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

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

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

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

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

26 **Wage Statement Violations**

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

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

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

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

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

1 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
2 described above), which results in a violation of Labor Code section 226(a).

3 227. Separately, and independent of the above allegations, based on information and
4 belief, DEFENDANTS issued wage statements to Aggrieved Employees that failed to list the total
5 hours worked, in violation of including but not limited to, Labor Code section 226(a)(2).

6 228. Failure to list all hours worked on a wage statement gives rise to an inference of
7 injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th
8 1308, 1337).

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

13 230. Separately, and independent from the above allegations, based on information and
14 belief, DEFENDANTS issued wage statements to PLAINTIFFS and Aggrieved Employees that
15 violate Labor Code section 226(a)(8), by failing to list the correct name and/or address of the legal
16 entity that is the employer.

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

19 232. For example, based on information and belief, wage statements issued by
20 DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT
21 AGGRIEVED EMPLOYEE is being paid. For example, based on information and belief, at times,
22 DEFENDANTS issued wage statements to Aggrieved Employees containing payment for hours
23 worked during previous pay periods, yet DEFENDANTS' wage statements do not include the
24 inclusive dates of the accurate pay period for that retroactive pay, further failing to list the total
25 hours worked for the pay period, including but not limited to, the total hours worked for the pay
26 period the retroactive pay corresponds with.

27 233. For example, based on information and belief, DEFENDANTS' wage statements
28 provided to Aggrieved Employees list a category for "Retro" and/or retroactive pay without

1 including the inclusive dates of the accurate pay period for that retroactive pay, further failing to list
2 the total hours worked for the pay period, including but not limited to, the total hours worked for
3 the pay period the retroactive pay corresponds with, in violation of including but not limited to,
4 Labor Code sections 226(a)(2) and/or 226(a)(6).

5 234. DEFENDANTS' failure to accurately list all hours worked on all wage statements
6 caused confusion to PLAINTIFFS and caused and continues to cause confusion to other Aggrieved
7 Employees over whether they received all wages owed to them.

8 235. As a result, Aggrieved Employees have suffered injury as they could not easily
9 determine whether they received all wages owed to them and whether they were paid for all hours
10 worked.

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

15 237. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFFS and
16 Aggrieved Employees with accurate, itemized wage statements.

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

26 239. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
27 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
28

1 during which the statute provisions were violated. ⁴

2 **Unlawful Deductions**

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

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

17 **Reporting Time Pay Violations.**

18 242. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

27 244. Aggrieved Employees were not paid reporting time wages in accordance with

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

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

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

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

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

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

21 **Seating Violations**

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

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

26 (A) All working employees shall be provided with suitable seats when the nature of the
27 work reasonably permits the use of seats.
28

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

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

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

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

17 253. The Aggrieved Employees worked in various positions. The nature of Aggrieved
18 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
19 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
20 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
21 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
22 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
23 separate civil penalty.

24 **Sick Leave Violations**

25 254. DEFENDANTS violated California's paid sick leave laws including, Labor Code
26 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to Aggrieved
27 Employees or failed to properly accrue paid sick leave due to DEFENDANTS' failure to account
28 for actual hours worked (as explained above), and/or failure to incorporate multiple rates of pay

1 and/or all forms of non-discretionary remuneration including but not limited to, non-discretionary
2 bonuses, shift differential pay, and/or other non-discretionary compensation into the sick leave pay
3 rate calculation.

4 255. DEFENDANTS further failed to give Aggrieved Employees notice of their paid sick
5 leave rights – or thereby putting their entitlement to sick leave in a Labor Code section 2810.5
6 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick leave and the
7 balance of paid sick leave left to the employees, which affected PLAINTIFFS and Aggrieved
8 Employees’ intelligent exercise of their paid sick leave.

9 256. But for this failure, Aggrieved Employees would have used their paid sick leave at
10 least prior to their respective separations, for as on several occasions thereafter, he or she would
11 have been entitled to use the banked sick leave and earn appropriate compensation.

12 257. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
13 documenting the hours worked and paid sick days accrued and used by PLAINTIFFS and all
14 Aggrieved Employees, permitting the presumption that PLAINTIFFS and all Aggrieved Employees
15 were entitled to the maximum number of hours accruable.

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

21 259. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

22 260. On information and belief, PLAINTIFFS allege that all of these practices were
23 experienced and continue to be experienced by other Aggrieved Employees.

24 261. Accordingly, PLAINTIFFS seek all appropriate relief under the PAGA, the
25 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
26 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

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

28 262. California Labor Code section 227.3 provides that when an employer policy provides

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

6 263. Based on information and belief, DEFENDANTS had and continue to have a
7 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
8 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
9 to Aggrieved Employees upon separation of employment, in violation of California law, including
10 but not limited to, Labor Code section 227.3.

11 **Untimely Payment of Final Wages**

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

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

25 266. Based on information and belief, DEFENDANTS failed and continue to fail to timely
26 pay final wages to PLAINTIFFS and Aggrieved Employees upon separation of employment in
27 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFFS
28 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not

1 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
2 sick leave and/or paid time off wages at the properly accrued rates.

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

6 **Violation of Labor Code Section 208**

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

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

16 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

17 270. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
18 require any employee or applicant for employment to agree, in writing, to any term or condition
19 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
20 continue to require PLAINTIFFS and Aggrieved Employees to agree in writing to unlawful
21 conditions of employment including but not limited to, unlawful non-solicitation/non-compete
22 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
23 waivers, including but not limited to, unlawful meal period waivers, unlawful forum selection
24 clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial
25 checks as a condition of obtaining and/or continuing employment in violation of Labor Code section
26 432.5.

27 271. Labor Code section 432.6(a), provides that “a person shall not, as a condition of
28 employment, continued employment, or the receipt of any employment-related benefit, require any

1 applicant for employment or any employee to waive any right...”

2 272. Based on information and belief, DEFENDANTS required NON-EXEMPT
3 AGGRIEVED EMPLOYEES to sign meal period waivers that were universally signed as a
4 condition of employment, including but not limited to, during the onboarding process. By requiring
5 NON-EXEMPT AGGRIEVED EMPLOYEES to sign unlawful meal period waivers as a condition
6 of obtaining and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5.
7 Further, these invalid waivers are otherwise unlawful under Labor Code section 432.6.

8 273. Moreover, the California Labor Code places certain procedural and substantive limits
9 on an employers’ ability to conduct employee background checks and on how employers can use
10 the information they obtain through those background checks. Labor Code section 1024.5 states that
11 employers, except for financial institutions, may order a credit check only if the individual works
12 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
13 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
14 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
16 background check, including but not limited to identifying an appropriate reason for the background
17 check, a separate consent form with required disclosures and certain formatting requirements,
18 additional forms such as a summary of rights, a way by which to request a copy of the report, as
19 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

27 276. Based on further information and belief, DEFENDANTS required Aggrieved
28 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct

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

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

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

9 Unlawful Inquires into Criminal History

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

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

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

24 Unlawful PAGA Waiver

25 282. 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.

28 283. 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.")

6 284. 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.'")

11 285. 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 **Violation of Labor Code Section 432.6**

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

21 287. Labor Code Section 432.6(a) provides: "[A] person shall not, as a condition of
22 employment, continued employment, or the receipt of any employment-related benefit, require any
23 applicant for employment or any employee to waive any right..."

24 288. Labor Code Section 432.6(b) provides in pertinent part:

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

27 290. Based on information and belief, DEFENDANTS require/required Aggrieved
28 Employees to waive their right to first and/or second meal periods as a condition of working for

1 DEFENDANTS. Based on further information and belief, if/when Aggrieved Employees do not
2 abide by DEFENDANTS' policies and rules, of which this waiver is included as part of
3 DEFENDANTS' policies/rules, said Aggrieved Employees are subject to disciplinary action, up to
4 and including termination. As such, DEFENDANTS violated including but not limited to, Labor
5 Code sections 432.6 and/or 432.5 by virtue of including but not limited to, requiring Aggrieved
6 Employees to sign invalid meal period waivers as a condition of employment and/or for threatening,
7 retaliating and/or discriminating against and/or terminating Aggrieved Employees because of their
8 refusal to waive their meal period rights.

9 291. Under the provisions of PAGA and the above mentioned Labor Code sections,
10 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
11 226.2, 226.7, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174.5,
12 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2751, 2802, 2810.5 and all applicable Wage
13 Orders as well as all interpretations of these laws by California Courts and administrative bodies, as
14 well as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
15 penalties:

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

25 292. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
26 Aggrieved Employees are entitled to recover civil penalties, costs, and attorney's fees.

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PRAYER FOR RELIEF

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

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

Dated: February 21, 2024

CROSNER LEGAL, PC

By: 
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiffs