

1 BRANDON BROUILLETTE, ESQ (SBN 273156)
bbrouillette@crosnerlegal.com

2 KAREN WALLACE, ESQ (SBN 272309)
karen@crosnerlegal.com

3 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com

4 **CROSNER LEGAL, PC**

5 9440 Santa Monica Blvd. Suite 301

6 Beverly Hills, CA 90210

7 Tel: (866) 276-7637

8 Fax: (310) 510-6429

9 Attorneys for Plaintiff MARIA GUADALUPE MORENO

10 on behalf of the State of California

11 and all Aggrieved Employees

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF KERN**

14 MARIA GUADALUPE MORENO, on
15 behalf of the State of California and all
16 Aggrieved Employees,

17 Plaintiff,

18 v.

19 N & L FARM LABOR SERVICES, INC., a
20 California Corporation; and DOES 1-100,
21 inclusive,

22 Defendants.

Case No.: BCV-24-100250

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

1 Plaintiff, MARIA GUADALUPE MORENO, (“PLAINTIFF”), on behalf of the State of
2 California and all Aggrieved Employees (as defined below), hereby files this Complaint against
3 Defendants N & L FARM LABOR SERVICES, INC., a California Corporation; and DOES 1-100,
4 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
5 believes and thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

23 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
24 California and a citizen of the State of California. At all relevant times, PLAINTIFF has also been
25 known as “Lupe Moreno”, short for Maria Guadalupe Moreno.

26 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
27 DEFENDANTS as a non-exempt employee with a job title of grape harvester and/or a similar title(s)
28 and/or job position(s) from in or around 2018 through on or around August 11, 2023. PLAINTIFF

1 worked for DEFENDANTS at farm(s), vineyard(s), field(s) and/or other facilities in California as
2 assigned by DEFENDANTS, including but not limited to, farm(s), vineyard(s), field(s) and/or other
3 locations in Kern County, California, operating under the name "Sunview Vineyards of California."

4 6. Defendant N & L FARM LABOR SERVICES, INC. is a California Corporation that,
5 at all relevant times, was authorized to do business within the State of California and is doing
6 business in the State of California.

7 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
8 farms, vineyards, fields and/or other facilities and/or other location(s) in California, including but
9 not limited to, the farms, vineyards, fields and/or other facilities in various cities throughout
10 California, including but not limited to, in Kern County, California, including but not limited to,
11 farm(s), vineyard(s), field(s) and/or other locations in Kern County, California, operating under the
12 name "Sunview Vineyards of California." DEFENDANTS, through its various locations, serve the
13 agriculture industry.

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

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

1 controlled, aided and abetted the conduct of all other Defendants.

2 **JOINT LIABILITY**

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

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

27 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
28 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized

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

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

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

1 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
2 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
3 collectively would evaluate their wage rates.

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

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

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

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

21 **PAGA ALLEGATIONS**

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

25 All current and former non-exempt employees that worked for any
26 one or more of the DEFENDANTS at any location in California at
27 any time from one year plus 65 days from the filing of the initial
28 Complaint through the present ("PAGA Period").

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

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

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

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

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

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

28 **FACTUAL ALLEGATIONS**

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

5 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
6 DEFENDANTS as a non-exempt employee with a job title of grape harvester and/or a similar title(s)
7 and/or job position(s) from in or around 2018 through on or around August 11, 2023. PLAINTIFF
8 worked for DEFENDANTS at farm(s), vineyard(s), field(s) and/or other facilities in California as
9 assigned by DEFENDANTS, including but not limited to, farm(s), vineyard(s), field(s) and/or other
10 facilities in Kern County, California. PLAINTIFF regularly worked at least eight (8) hours per day
11 hours, at least five (5) days per week.

12 27. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
13 hourly basis for time counted by DEFENDANTS as hours worked. At times during the relevant
14 period, PLAINTIFF was compensated with piece-rate pay and/or non-discretionary bonus
15 pay/incentive pay and/or other non-discretionary compensation.

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

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

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

5 31. For example, based on information and belief, DEFENDANTS engaged in systemic
6 time record manipulation to shave time worked off PLAINTIFF and other Aggrieved Employees'
7 workdays, by, for example, editing time records to delete portions of total hours worked or otherwise
8 understate actual hours worked by PLAINTIFF and other Aggrieved Employees.

9 32. For example, based on information and belief, DEFENDANTS instructed
10 PLAINTIFF and/or other Aggrieved Employees to notate their scheduled hours worked each day
11 on a written time sheet during their purported meal period.

12 33. Based on information and belief, DEFENDANTS recorded and/or required
13 PLAINTIFF to record only PLAINTIFF's scheduled hours worked rather than actual hours worked
14 and/or rounded PLAINTIFF's total hours worked to at least the nearest half and/or whole hour for
15 most if not all pay periods, resulting in DEFENDANTS' failure to pay PLAINTIFF for all hours
16 worked and the underpayment of minimum wages and overtime wages owed to PLAINTIFF.

17 34. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
18 consistently required to perform pre-shift and/or post-shift work that was neither recorded nor
19 compensated. For example, based on information and belief, Aggrieved Employees were required
20 to be at their field areas/respective workstations at their scheduled shift start time or face discipline.
21 As such, Aggrieved Employees typically arrived at work at least five (5) to seven (7) minutes prior
22 to their scheduled shift start times each day so that they could perform any required pre-shift work,
23 including but not limited to, bestowing their personal items in the employee storage area,
24 retrieving/compiling their work tools/equipment (e.g., knives, blades, scissors, baskets/containers,
25 tractors) making any necessary adjustments to their tools/equipment and/or perform any required
26 maintenance tasks, don work clothing/their uniforms and protective equipment (aprons, gloves,
27 protective chaps, rain gear, hairnets and/or face masks), and/or complete other work tasks so as to
28 be ready to be at their respective work stations at their scheduled shift start times as mandated by

1 DEFENDANTS. This pre-shift off-the-clock work was neither recorded nor compensated resulting
2 in the substantial underpayment of wages owed to PLAINTIFF and other Aggrieved Employees.

3 35. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
4 also required to perform post-shift off-the-clock work that was neither recorded nor compensated.
5 For example, based on information and belief, Aggrieved Employees put away their work
6 tools/equipment, changed out of their work clothing/uniform and/or protective gear after the end
7 time of their scheduled shifts and/or outside of their scheduled shift times.

8 36. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
9 required to perform additional off-the-clock work for which they were not compensated. For
10 example, based on information and belief, DEFENDANTS did not compensate Aggrieved
11 Employees for time spent donning and doffing personal protective equipment, safety equipment
12 and/or uniforms/work clothing (e.g., aprons, gloves, hairnets and/or face masks) during meal
13 periods, rest periods, before the start of a scheduled shift, and/or after completing a scheduled shift.

14 37. Based on information and belief, DEFENDANTS also required Aggrieved
15 Employees to wash their hands before clocking in for their shifts, during rest periods and/or before
16 clocking back in from meal periods, resulting in off-the-clock work and unpaid minimum wages
17 and unpaid overtime wages as well as meal and rest period violations.

18 38. In addition, based on information and belief, DEFENDANTS required Aggrieved
19 Employees to obtain Covid-related testing outside of their scheduled shift times without
20 compensating them for the time spent completing DEFENDANTS' testing requirements.

21 39. Based on information and belief, Aggrieved Employees were required to undergo
22 pre-shift/off-the-clock temperature screenings and/or answer screening questions related to COVID-
23 19, which resulted in at least a few minutes of off-the-clock work. This off-the-clock work was
24 uncompensated and resulted in unpaid wages.

25 40. Moreover, based on information and belief, at times, DEFENDANTS paid
26 PLAINTIFF and/or other Aggrieved Employees on a strictly piece-rate basis (e.g., per unit created,
27 pruned and/or harvested), at least during some pay periods, during the relevant time period.
28 However, based on information and belief, DEFENDANTS failed to separately compensate

1 Aggrieved Employees for all non-piece rate related activities/all non-productive time, including but
2 not limited to, all rest breaks and/or time spent preparing/setting up for tasks, waiting between jobs
3 and tasks and/or other waiting time, and/or performing work duties that otherwise fall outside of the
4 piece-rate pay criteria. DEFENDANTS' failure to separately compensate Aggrieved Employees for
5 their rest periods and/or other non-productive time and/or failure to compensate them at the correct
6 rates for all non-productive time including rest periods resulted in the failure to pay Aggrieved
7 Employees for all hours worked and violations of California wage and hour laws, including but not
8 limited to, Labor Code sections 226.2 and/or 1197. Based on information and belief,
9 DEFENDANTS further failed to include this information on these employees' wage statements
10 required by Labor Code section 226.2.

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

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

20 43. For example, DEFENDANTS issued wage statements to PLAINTIFF that
21 demonstrate DEFENDANTS rounded PLAINTIFF's total hours worked to at least the nearest half
22 and/or whole hour during including but not limited to pay periods for the following pay dates:
23 7.27.23 (showing precisely 38.50 total hours worked); 8.3.23 (showing precisely 32.00 total hours
24 worked) 8.10.23 (showing precisely 40.00 total hours worked); 8.12.23 (showing precisely 30.00
25 total hours worked) and 8.17.23 (showing precisely 30.00 total hours worked). Based on
26 information and belief, DEFENDANTS rounded PLAINTIFF's total hours worked to at least the
27 nearest half and/or whole hour during most if not all pay periods during PLAINTIFF's employment,
28 resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the

1 underpayment of wages owed to PLAINTIFF.

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

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

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

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

22 48. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
23 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
24 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
25 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
26 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
27 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
28 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary

1 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
2 completely.

3 49. For example, based on information and belief, Aggrieved Employees were forced to
4 take late meal periods in order to complete assigned job duties. Based on information and belief,
5 Aggrieved Employees were at times interrupted during purported meal periods and/or had meal
6 periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned
7 job duties. For example, DEFENDANTS provided no mechanism with which for PLAINTIFF and
8 other Aggrieved Employees to record the true start and stop times of meal periods, and
9 DEFENDANTS did not record the true start and stop times of meal periods. Based on information
10 and belief, the start and stop times of PLAINTIFF's and other Aggrieved Employees' meal periods
11 were not recorded. Instead, DEFENDANTS simply automatically deducted at least thirty minutes
12 per shift for meal periods DEFENDANTS had actual and/or constructive knowledge PLAINTIFF
13 and other Aggrieved Employees were frequently and/or always required to work through part or all
14 of their owed meal periods, cut their meal periods short, take on-duty meal periods and/or interrupted
15 meal periods.

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

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

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

28 53. Based on information and belief, despite DEFENDANTS' failure to provide lawful

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

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

8 55. For example, when PLAINTIFF worked more than ten hours in a shift, PLAINTIFF
9 was not provided with a second meal period.

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

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

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

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

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

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

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

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

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

18 **64.** For example, based on information and belief, PLAINTIFF and/or other Aggrieved
19 Employees were frequently required to take on-duty rest periods and/or cut her rest periods short
20 due to the need to complete assigned job duties.

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

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

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

1 DEFENDANTS' control during rest periods.

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

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

12 70. **Cooldown Recovery Period Violations.** California Code of Regulations, Title 8,
13 section 3395 mandates that all employers with “outdoor places of employment” implement a heat
14 illness prevention program that includes, among other requirements, providing workers “cool-
15 down” periods of at least five minutes in the shade. Specifically, section 3395 provides that
16 “employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of
17 no less than five minutes at a time when they feel the need to do so to protect themselves from
18 overheating” and that “such access to shade shall be permitted at all times.” Under California Labor
19 Code section 226.7, if an employer fails to provide an employee a recovery period, the employer
20 shall pay the employee one additional hour of pay at the employee’s regular rate of compensation
21 for each workday that the meal or rest or recovery period is not provided.

22 71. Based on information and belief, Aggrieved Employees were required to spend
23 multiple hours at a time outdoors in significantly high temperature heat conditions. DEFENDANTS
24 failed to provide proper heat illness prevention training and/or heat illness
25 policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8
26 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
27 California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
28 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,

1 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
2 shade for extended periods of time. In addition, DEFENDANTS, failed to pay PLAINTIFF and
3 other Aggrieved Employees with an additional hour of pay at PLAINTIFF's regular rate of pay for
4 each missed cooldown recovery period.

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

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

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

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

23 76. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
24 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
25 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
26 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
27 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
28 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all

1 applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate by the employee.

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

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

15 79. For example, as described herein, based on information and belief, DEFENDANTS
16 failed to incorporate all forms of non-discretionary compensation earned during the pay period,
17 including but not limited to, non-discretionary bonus/incentive pay, piece rate pay, multiple base
18 rates of pay and/or other non-discretionary compensation into the overtime pay rate calculation, and
19 as such, failed to display the proper overtime rate(s) for each hour of overtime worked by Aggrieved
20 Employees.

21 80. Based on information and belief, DEFENDANTS issued wage statements that failed
22 to list the number of piece rate units completed/earned during the pay period and the applicable rate
23 of pay for each piece rate unit.

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

28 82. Based on information and belief, wage statements issued by DEFENDANTS failed

1 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid.

2 83. For example, based on information and belief, wage statements issued by
3 DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT
4 AGGRIEVED EMPLOYEE is being paid. For example, based on information and belief, at times,
5 DEFENDANTS issued wage statements to Aggrieved Employees containing payment for hours
6 worked during previous pay periods, yet DEFENDANTS' wage statements do not include the
7 inclusive dates of the accurate pay period for that retroactive pay, further failing to list the total
8 hours worked for the pay period, including but not limited to, the total hours worked for the pay
9 period the retroactive pay corresponds with. For example, based on information and belief,
10 DEFENDANTS' wage statements provided to Aggrieved Employees list a category for "Retro"
11 and/or retroactive pay without including the inclusive dates of the accurate pay period for that
12 retroactive pay, further failing to list the total hours worked for the pay period, including but not
13 limited to, the total hours worked for the pay period the retroactive pay corresponds with, in
14 violation of including but not limited to, Labor Code sections 226(a)(2) and/or 226(a)(6).

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

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

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

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

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

4 **88. Failure to Produce Employment Records.** Based on information and belief,
5 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
6 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
7 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
8 counsel, sent a written request for payroll and personnel records to DEFENDANTS. Yet,
9 DEFENDANTS failed to timely produce complete records, including but not limited to, time
10 records, within the time periods delineated by California labor law. Based on information and belief,
11 DEFENDANTS failed and continue to fail to timely produce complete time, pay, and personnel
12 records when requested by other Aggrieved Employees.

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

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

27 **91. Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an
28 employer to pay employees compensated on a piece-rate basis separately for rest and recovery

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

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

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

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

28 95. For example, based on information and belief, Aggrieved Employees were required

1 to receive and respond to work-related calls and/or messages on their personal cell phones/mobile
2 devices, including but not limited to, regarding work scheduling and/or other work tasks without
3 being provided any and/or full reimbursement from DEFENDANTS for these business expenses.
4 Based on information, at times, Aggrieved Employees were required to supply their own uniforms,
5 work clothing/work shoes and/or safety/protective gear, such as, but not limited to, work shoes,
6 protective eyewear, gloves ear plugs protective eyewear and/or rain gear and/or face masks and/or
7 work equipment including but not limited to hand tools (e.g., scissors, shears, knives, and/or blades,
8 baskets/containers) which DEFENDANTS required, yet Aggrieved Employees were not reimbursed
9 by DEFENDANTS for the business expenses they incurred in connection therewith.

10 96. Based on information and belief, at times, DEFENDANTS failed to reimburse
11 Aggrieved Employees for expenses associated with having to purchase and/or maintain their own
12 hand tools (scissors, shears, knives, and/or blades) baskets/containers, ear plugs protective eyewear
13 and/or face masks) required to perform their assigned job duties.

14 97. For example, PLAINTIFF was required to supply her own gloves, protective
15 eyewear, scissors for cutting grape vines and/or other uniforms, work clothing/work shoes and/or
16 safety/protective gear and/or hand tools and/or equipment required to carry out PLAINTIFF's
17 assigned job duties without receiving any and/or full reimbursement from DEFENDANTS for the
18 business expenses PLAINTIFF incurred in connection therewith.

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

25 99. As explained above, based on information and belief, Aggrieved Employees were
26 not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost
27 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
28 protective/safety gear and/or hand tools and/or work equipment.

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

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

10 102. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
11 provides as follows:

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

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

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

1 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 120. Suitable seating is one of the worker protections covered by California's Wage
27 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
28 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*

1 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

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

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

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

22 125. Upon separation of employment, Aggrieved Employees' final paychecks were not
23 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
24 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
25 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
26 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
27 accrued rates. For example, PLAINTIFF's employment separated on or around August 13, 2023,
28 however, DEFENDANTS' last wage statement for PLAINTIFF is dated August 17, 2023.

Moreover, PLAINTIFF's late final paycheck was devoid of all wages owed 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.

126. Based on further information and belief, DEFENDANTS failed to timely provide all owed wages immediately upon discharge of employment. Based on 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.

127. **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.

128. 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.

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

Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

130. Based on information and belief, DEFENDANTS required Aggrieved Employees to agree in writing to unlawful conditions of employment including but not limited to unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in

1 violation of Labor Code section 432.5.

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

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

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

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

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

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

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

11 Unlawful Inquires into Criminal History

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

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

21 Unlawful PAGA Waiver

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

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

1 (“We conclude that where, as here, an employment agreement compels the waiver of representative
2 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

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

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

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

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

21 146. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
22 engaged in these same herein described unlawful practices, which led to violations of the California
23 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
24 unlawful practices to all of its employees that it applied to PLAINTIFF.

25
26 **FIRST CAUSE OF ACTION**
27 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
28 **2698, ET SEQ.**
(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all
Defendants)

1 147. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

2 **Failure to Keep Accurate Records**

3 148. California Labor Code § 1174 requires employers to keep “accurate and complete”
4 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
5 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
6 times during which all owed meal periods were provided each day.

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

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

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

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

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

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

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

19 154. Based on information and belief, DEFENDANTS fail to timely produce or make
20 available Aggrieved Employees’ personnel records and/or payroll records, including but not limited
21 to, time records, when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the
22 applicable Wage Order. These violations subject DEFENDANTS to penalties under Labor Code
23 sections 226, 1198.5, and 2699.

24 **Meal Period Violations**

25 155. California law requires employers to provide employees a duty-free, uninterrupted
26 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and
27 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and
28 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*

1 *Court* (2012) 53 Cal.4th 1004.

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

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

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

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

26 160. Based on information and belief, DEFENDANTS had and continue to have a policy
27 of rounding the start and end times of employees’ meal periods and/or automatically deducting thirty
28 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and

1 Aggrieved Employees did not receive compliant meal periods.

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

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

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

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

18 **Rest Period Violations**

19 165. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
20 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
21 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
22 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
23 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
24 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
25 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
26 1029). The rest period requirement obligates employers to permit and authorize employees to take
27 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
28 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th

1 257. If the employer fails to provide any required rest period, the employer must pay the employee
2 one hour of pay at the employee's regular rate of compensation for each workday the employer did
3 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
4 applicable IWC Wage Order, §12(B).

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

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

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

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

28 170. Moreover, based on information and belief, DEFENDANTS failed to pay a rest

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

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

9 **Cooldown Recovery Period Violations**

10 172. California Code of Regulations, Title 8, section 3395 mandates that all employers
11 with “outdoor places of employment” implement a heat illness prevention program that includes,
12 among other requirements, providing workers “cool-down” periods of at least five minutes in the
13 shade. Specifically, section 3395 provides that “employees shall be allowed and encouraged to take
14 a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the
15 need to do so to protect themselves from overheating” and that “such access to shade shall be
16 permitted at all times.” Under California Labor Code section 226.7, if an employer fails to provide
17 an employee a recovery period, the employer shall pay the employee one additional hour of pay at
18 the employee’s regular rate of compensation for each workday that the meal or rest or recovery
19 period is not provided.

20 173. Based on information and belief, Aggrieved Employees were required to spend
21 multiple hours at a time outdoors in significantly high temperature heat conditions. DEFENDANTS
22 failed to provide proper heat illness prevention training and/or heat illness
23 policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8
24 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
25 California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
26 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
27 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
28 shade for extended periods of time. In addition, DEFENDANTS, failed to pay Aggrieved

1 Employees with an additional hour of pay at their respective regular rate(s) of pay for each missed
2 cooldown recovery period.

3 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

22 **Minimum and Overtime Wage Violations**

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

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

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

8 180. Section 3(A)(1) of IWC Wage Order No. 14, applicable to agricultural occupations,
9 provides in pertinent part as follow:

10 (A) The following overtime provisions are applicable to employees eighteen (18)
11 years of age or over and to employees sixteen (16) or seventeen (17) years of age
12 who are not required by law to attend school:

13 (1) Such employees shall not be employed more than ten (10) hours in any one
14 workday or more than six (6) days in any workweek unless the employee receives
15 one and one-half (1 1/2) times such employee's regular rate of pay for all hours
16 worked over ten (10) hours in any workday and for the first eight (8) hours on the
17 seventh (7th) day of work and double the employee's regular rate of pay for all hours
18 worked over eight (8) on the seventh (7th) day of work in the workweek.

19 (2) For employers of more than 25 employees:

20 (a) Starting January 1, 2019, an employee shall not be employed more than nine and
21 one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the
22 employee receives one and one-half (1 1/2) times such employee's regular rate of
23 pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or
24 more than fifty-five (55) hours in anyone workweek.

25 (b) Starting January 1, 2020, an employee shall not be employed more than nine (9)
26 hours per workday or fifty (50) hours per workweek unless the employee receives
27 one and one-half (1 1/2) times such employee's regular rate of pay for all hours
28 worked over nine (9) hours in any one workday or more than fifty (50) hours in any

one workweek.

(c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

(d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

(3) For employers of 25 or fewer employees:

(a) Starting January 1, 2022, the overtime standards and compensation in subsection (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(b) Starting January 1, 2023, the overtime standards and compensation in subsection (2)(b) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(c) Starting January 1, 2024, the overtime standards and compensation in subsection (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one workday or workweek.

(d) Starting January 1, 2025, the overtime standards and compensation in subsection (2)(d) above, shall apply to any employee who works over the specified numbers of hours in any one workday or workweek.

181. Based on information and belief, DEFENDANTS employed more than twenty-five (25) employees during the relevant period

182. As explained above, DEFENDANTS violated California's minimum and overtime

40
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

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

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

15 185. Based on information and belief, DEFENDANTS failed and continue to fail to pay
16 a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours
17 in a week and/or in accordance with California law, including but not limited to, the applicable IWC
18 Wage Orders, including but not limited to, Wage Order 14.

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

23 187. Based on information and belief, DEFENDANTS sometimes paid Aggrieved
24 Employees multiple rates of base pay in one workweek but failed to incorporate all multiple rates
25 of base pay into the regular rate of pay for purposes of calculating the owed overtime rate. For
26 example, on information and belief, at times, Aggrieved Employees earned multiple base pay rates
27 during the same workweek, yet DEFENDANTS failed to incorporate all/both base pay rates into
28 the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the

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

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

9 189. For example, based on information and belief, at times, PLAINTIFF and other
10 Aggrieved Employees earned non-discretionary bonuses/incentive pay and/or piece-rate pay and/or
11 other non-discretionary compensation during pay periods in which they worked overtime, however,
12 DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate(s) of
13 pay for purposes of calculating the owed overtime rate(s), resulting in the miscalculation and
14 underpayment of overtime wages owed to PLAINTIFF and other Aggrieved Employees, further
15 resulting in wage statement violations, described herein.

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

20 **Violation of Labor Code Section 226.2**

21 191. Labor Code section 226.2 requires an employer to pay employees compensated on
22 a piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any
23 piece-rate pay. This statute further requires an employer to include on the wage statements for these
24 employees the total hours of compensable rest and recovery period, the total hours for other non-
25 productive time, the rates of compensation for these hours, and the gross wages paid for these hours.
26 In addition, the statute requires that employees shall be compensated for rest and recovery periods at
27 a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by
28 dividing the total compensation for the workweek, exclusive of compensation for rest and recovery

1 periods and any premium compensation for overtime, by the total hours worked during the
2 workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case
3 law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

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

10 **Statutory Wage Violations**

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

22 **Refusal to Make Payment**

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

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

3 **Standard Conditions of Labor Violations**

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

12 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

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

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

26 **Wage Statement Violations**

27 205. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **Unlawful Deductions**

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

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

25 **Reporting Time Pay Violations**

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

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

28 ³ Labor Code § 226.3 (establishing that the civil penalty is ~~48~~per employee per violation”).

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

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

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

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

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

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

1 **Seating Violations**

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

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

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

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

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

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

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

24 231. The Aggrieved Employees worked in various positions. The nature of Aggrieved
25 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
26 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
27 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
28 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each

1 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
2 separate civil penalty.

3 **Sick Leave Violations**

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

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

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

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

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

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

2 238. On information and belief, PLAINTIFF alleges that all of these practices were
3 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

22 242. Based on information and belief, DEFENDANTS had and continue to have a
23 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
24 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
25 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
26 discretionary compensation, including but not limited to, shift differentials) to Aggrieved
27 Employees upon separation of employment, in violation of California law, including but not limited
28 to, Labor Code section 227.3.

1 **Untimely Payment of Final Wages**

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

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

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

23 246. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
24 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
25 256.

26 **Violation of Labor Code Section 208**

27 247. Labor Code Section 208 provides: Every employee who is discharged shall be paid
28 at the place of discharge, and every employee who quits shall be paid at the office or agency of the

1 employer in the county where the employee has been performing labor. All payments shall be made
2 in the manner provided by law.

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

8 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

1 additional forms such as a summary of rights, a way by which to request a copy of the report, as
2 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

20 Unlawful Inquires into Criminal History

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

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

1 application in violation of California law.

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

7 Unlawful PAGA Waiver

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

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

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

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

27 Violation of Labor Code Section 432.6

28 263. Based on information and belief, DEFENDANTS required Aggrieved Employees to
56
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 sign meal period waivers that were universally signed as a condition of employment, including but
2 not limited to, during the onboarding process. Further, these invalid waivers are otherwise unlawful
3 under Labor Code section 432.6.

4 264. Labor Code Section 432.6(a) provides: “[A] person shall not, as a condition of
5 employment, continued employment, or the receipt of any employment-related benefit, require any
6 applicant for employment or any employee to waive any right...”

7 265. Labor Code Section 432.6(b) provides in pertinent part:

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

10 267. Based on information and belief, DEFENDANTS require/required Aggrieved
11 Employees to waive their right to first and/or second meal periods as a condition of working for
12 DEFENDANTS. Based on further information and belief, if/when Aggrieved Employees do not
13 abide by DEFENDANTS’ policies and rules, of which this waiver is included as part of
14 DEFENDANTS’ policies/rules, said Aggrieved Employees are subject to disciplinary action, up to
15 and including termination. As such, DEFENDANTS violated including but not limited to, Labor
16 Code sections 432.6 and/or 432.5 by virtue of including but not limited to, requiring Aggrieved
17 Employees to sign invalid meal period waivers as a condition of employment and/or for threatening,
18 retaliating and/or discriminating against and/or terminating Aggrieved Employees because of their
19 refusal to waive their meal period rights.

20 268. Under the provisions of PAGA and the above mentioned Labor Code sections,
21 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
22 226.2, 226.7, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 512, 551, 552, 558, 558.1, 1174,
23 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable
24 Wage Orders as well as all interpretations of these laws by California Courts and administrative
25 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
26 the following penalties:

- 27 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
28 relevant California Labor Code provisions listed herein only if permitted by the

- 1 PAGA statute, pursuant to Labor Code section 2699(a); and
- 2 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
- 3 violations without a civil penalty recoverable under the PAGA, all in the default
- 4 amounts provided by Labor Code section 2699(f).
- 5 c. The proper measure of penalties under PAGA is the number of violations,
- 6 whether those violations were committed as against PLAINTIFF or any
- 7 Aggrieved Employee, whether a party to this action or not.

8 269. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,

9 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF

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

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

Dated: January 23, 2024

CROSNER LEGAL, PC

By: 
Brandon Brouillette, Esq.
Karen Wallace, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff
MARIA GUADALUPE MORENO