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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; SUNVIEW
21 VINEYARDS OF CALIFORNIA, INC., a
22 California Corporation; and DOES 1-100,
23 inclusive,

24 Defendants.

Case No.: BCV-24-100250

**PLAINTIFF'S FIRST AMENDED
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 First Amended
3 Complaint against Defendants N & L FARM LABOR SERVICES, INC., a California Corporation;
4 SUNVIEW VINEYARDS OF CALIFORNIA, INC., a California Corporation; and DOES 1-100,
5 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
6 believes and thereon alleges as follows:

7 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

23 **THE PARTIES**

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

27 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
28 DEFENDANTS as a non-exempt employee with a job title of grape harvester and/or a similar title(s)

1 and/or job position(s) from in or around 2018 through on or around August 11, 2023. PLAINTIFF
2 worked for DEFENDANTS at farm(s), vineyard(s), field(s) and/or other facilities in California as
3 assigned by DEFENDANTS, including but not limited to, farm(s), vineyard(s), field(s) and/or other
4 locations in Kern County, California, operating under the name "Sunview Vineyards of California."

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

8 7. Defendant SUNVIEW VINEYARDS OF CALIFORNIA, INC. is a California
9 Corporation that, at all relevant times, was authorized to do business within the State of California
10 and is doing business in the State of California.

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

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

24 10. PLAINTIFF is further informed and believes that, at all relevant times, each
25 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
26 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
27 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
28 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all

1 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
2 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
3 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
4 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
5 controlled, aided and abetted the conduct of all other Defendants.

6 **JOINT LIABILITY**

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

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

1 or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF
2 and Aggrieved Employees to work for them.

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

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

22 15. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
23 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
24 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
25 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
26 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
27 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively
28 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of

1 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
2 and other Aggrieved Employees' employment with or without cause. Upon information and belief,
3 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
4 writing the details of their compensation, and the manner in which they were to take meal and rest
5 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
6 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
7 collectively would evaluate their wage rates.

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

13 17. Moreover, based on information and belief, N & L FARM LABOR SERVICES,
14 INC. hired PLAINTIFF and entered into a written employment agreement with PLAINTIFF. During
15 PLAINTIFF's employment, N & L FARM LABOR SERVICES, INC. maintained control over
16 many aspects of PLAINTIFF's employment, including, among other things, having the authority to
17 discipline PLAINTIFF, change PLAINTIFF's job assignment, change PLAINTIFF's work hours,
18 change PLAINTIFF's rates of pay, and to terminate PLAINTIFF's employment.

19 18. Based on information and belief, when PLAINTIFF was first hired, N & L FARM
20 LABOR SERVICES, INC. provided PLAINTIFF with orientation and training materials. N & L
21 FARM LABOR SERVICES, INC. issued PLAINTIFF written policies concerning meal periods,
22 rest breaks, timekeeping, hours worked, and payment of PLAINTIFF's wages, with which
23 PLAINTIFF was required to comply. Based on information and belief, among other things, these
24 policies provided that PLAINTIFF's weekly time records be submitted to N & L FARM LABOR
25 SERVICES, INC., and N & L FARM LABOR SERVICES, INC. was supposed to process
26 PLAINTIFF's time records and pay PLAINTIFF for all hours worked. N & L FARM LABOR
27 SERVICES, INC. exercised ultimate control over the payment of PLAINTIFF's wages, as N & L
28 FARM LABOR SERVICES, INC. issued PLAINTIFF his paychecks. Finally, N & L FARM

1 LABOR SERVICES, INC. directed PLAINTIFF to comply with SUNVIEW VINEYARDS OF
2 CALIFORNIA, INC. policies and directions. PLAINTIFF is informed and believes that N & L
3 FARM LABOR SERVICES, INC. exercised the same control over, applied the same policies and
4 practices, and engaged in the same acts and omissions with regard to the other Aggrieved
5 Employees.

6 19. SUNVIEW VINEYARDS OF CALIFORNIA, INC. similarly suffered or permitted
7 PLAINTIFF to work for them or engaged PLAINTIFF to work for them. PLAINTIFF is informed
8 and believes that SUNVIEW VINEYARDS OF CALIFORNIA, INC. entered into a written
9 agreement with N & L FARM LABOR SERVICES, INC., pursuant to which SUNVIEW
10 VINEYARDS OF CALIFORNIA, INC. paid N & L FARM LABOR SERVICES, INC. to provide
11 it with workers, including PLAINTIFF, to conduct SUNVIEW VINEYARDS OF CALIFORNIA,
12 INC. business operations – namely, to work in SUNVIEW VINEYARDS OF CALIFORNIA, INC.
13 farms, vineyards, fields and/or other facilities and/or other location(s). SUNVIEW VINEYARDS
14 OF CALIFORNIA, INC. suffered or permitted PLAINTIFF to work at SUNVIEW VINEYARDS
15 OF CALIFORNIA, INC. for the entirety of PLAINTIFF's employment.

16 20. SUNVIEW VINEYARDS OF CALIFORNIA, INC. further exercised control over
17 PLAINTIFF's wages, hours and working conditions. SUNVIEW VINEYARDS OF CALIFORNIA,
18 INC. also: (1) set PLAINTIFF's work hours and provided his work schedule; (2) provided
19 PLAINTIFF with policies regarding meal periods and rest breaks, with which PLAINTIFF was
20 required to comply; (3) directly supervised PLAINTIFF's work through its employees; (4) assigned
21 PLAINTIFF's job duties and trained PLAINTIFF on said job duties; (5) exercised authority to
22 reprimand and counsel PLAINTIFF regarding any issues, including work performance; (6)
23 exercised authority to end PLAINTIFF's work assignment at any time, the effective termination of
24 employment; (7) required PLAINTIFF to record hours worked using SUNVIEW VINEYARDS OF
25 CALIFORNIA, INC.'s timekeeping system; (8) determined whether and when PLAINTIFF would
26 receive meal periods and rest breaks; (9) subjected PLAINTIFF to unlawfully scheduled meal
27 periods and rest breaks; and, (10) was responsible for maintaining PLAINTIFF's timekeeping
28 records. On information and belief, SUNVIEW VINEYARDS OF CALIFORNIA, INC. issued

1 further written policies and practices and guidelines governing PLAINTIFF's working conditions
2 with which PLAINTIFF was required to comply.

3 21. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
4 control over, applied the same policies and practices, and engaged in the same acts and omissions
5 with regard to all other Aggrieved Employees.

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

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

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

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

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

27 **LIABILITY UNDER CALIFORNIA LABOR CODE SECTION 2810.3**

28 27. California Labor Code section 2810.3(b)(1) provides in pertinent part that “a client
8
PLAINTIFF’S FIRST AMENDED REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT

1 employer shall share with the labor contractor” all civil liability for the payment of wages to the
2 workers supplied by the labor contractor.

3 28. N & L FARM LABOR SERVICES, INC. is a “labor contractor” in that it supplies
4 SUNVIEW VINEYARDS OF CALIFORNIA, INC., a client employer, with workers to perform
5 labor within SUNVIEW VINEYARDS OF CALIFORNIA, INC.’s usual course of business. Lab.
6 Code § 2810.3(a)(3).

7 29. SUNVIEW VINEYARDS OF CALIFORNIA, INC. is a “client employer” in that
8 the business entity “obtains or is provided workers to perform labor within its usual course of
9 business” from labor contractor N & L FARM LABOR SERVICES, INC. Lab. Code §
10 2810.3(a)(1)(A). Moreover, SUNVIEW VINEYARDS OF CALIFORNIA, INC., has a workforce
11 of more than twenty-five workers and is supplied with at least five workers from a labor contractor
12 at any given time. Lab. Code § 2810.3(a)(1)(B).

13 30. Under Section 2810.3, DEFENDANTS thus share all civil liability for the payment
14 of wages to all workers supplied to SUNVIEW VINEYARDS OF CALIFORNIA, INC. by N & L
15 FARM LABOR SERVICES, INC.

16 31. PLAINTIFF complied with all administrative requirements by providing notice by
17 certified mail of the claims alleged herein to SUNVIEW VINEYARDS OF CALIFORNIA, INC.
18 Lab. Code § 2810.3(d).

19 32. Any reference herein to any alleged act or omission by any DEFENDANT shall be
20 deemed also to mean the same alleged act or omission by every other DEFENDANT, acting jointly
21 and severally.

22 **PAGA ALLEGATIONS**

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

27 (1) all non-exempt workers who were directly employed by N & L FARM LABOR SERVICES,
28 INC. regardless of where those non-exempt workers were assigned or staffed to work – in California

1 at any time one year plus 65 days from the filing of the initial Complaint through the present (the
2 “PAGA Period”);

3 (2) all non-exempt workers who were assigned/staffed to work at SUNVIEW VINEYARDS OF
4 CALIFORNIA, INC., by N & L FARM LABOR SERVICES, INC. and/or any other
5 staffing/temporary service agencies at any location in California at any time within the PAGA
6 Period; and

7 (3) all non-exempt workers who were directly employed by SUNVIEW VINEYARDS OF
8 CALIFORNIA, INC. to work at any location in California within the PAGA Period.

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

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

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

25 36. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
26 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
27 Employees.

28 37. The LWDA did not provide notice of its intention to investigate DEFENDANTS’

1 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
2 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
3 PLAINTIFF has exhausted the administrative remedies as required by Labor Code section 2699.3.
4 Consequently, PLAINTIFF's right to file the instant lawsuit has duly accrued.

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

8 **FACTUAL ALLEGATIONS**

9 39. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
10 worked for DEFENDANTS in the State of California. At all times referenced herein,
11 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
12 permitted them to work.

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

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

24 42. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
25 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
26 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
27 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
28 rounding policies, and failure to relieve employees of all duties/employer control during unpaid

1 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
2 below.

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

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

13 45. For example, based on information and belief, DEFENDANTS engaged in systemic
14 time record manipulation to shave time worked off PLAINTIFF and other Aggrieved Employees'
15 workdays, by, for example, editing time records to delete portions of total hours worked or otherwise
16 understate actual hours worked by PLAINTIFF and other Aggrieved Employees.

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

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

25 48. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
26 consistently required to perform pre-shift and/or post-shift work that was neither recorded nor
27 compensated. For example, based on information and belief, Aggrieved Employees were required
28 to be at their field areas/respective workstations at their scheduled shift start time or face discipline.

1 As such, Aggrieved Employees typically arrived at work at least five (5) to seven (7) minutes prior
2 to their scheduled shift start times each day so that they could perform any required pre-shift work,
3 including but not limited to, bestowing their personal items in the employee storage area,
4 retrieving/compiling their work tools/equipment (e.g., knives, blades, scissors, baskets/containers,
5 tractors) making any necessary adjustments to their tools/equipment and/or perform any required
6 maintenance tasks, don work clothing/their uniforms and protective equipment (aprons, gloves,
7 protective chaps, rain gear, hairnets and/or face masks), and/or complete other work tasks so as to
8 be ready to be at their respective work stations at their scheduled shift start times as mandated by
9 DEFENDANTS. This pre-shift off-the-clock work was neither recorded nor compensated resulting
10 in the substantial underpayment of wages owed to PLAINTIFF and other Aggrieved Employees.

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

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

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

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

1 53. Based on information and belief, Aggrieved Employees were required to undergo
2 pre-shift/off-the-clock temperature screenings and/or answer screening questions related to COVID-
3 19, which resulted in at least a few minutes of off-the-clock work. This off-the-clock work was
4 uncompensated and resulted in unpaid wages.

5 54. Moreover, based on information and belief, at times, DEFENDANTS paid
6 PLAINTIFF and/or other Aggrieved Employees on a strictly piece-rate basis (e.g., per unit created,
7 pruned and/or harvested), at least during some pay periods, during the relevant time period.
8 However, based on information and belief, DEFENDANTS failed to separately compensate
9 Aggrieved Employees for all non-piece rate related activities/all non-productive time, including but
10 not limited to, all rest breaks and/or time spent preparing/setting up for tasks, waiting between jobs
11 and tasks and/or other waiting time, and/or performing work duties that otherwise fall outside of the
12 piece-rate pay criteria. DEFENDANTS' failure to separately compensate Aggrieved Employees for
13 their rest periods and/or other non-productive time and/or failure to compensate them at the correct
14 rates for all non-productive time including rest periods resulted in the failure to pay Aggrieved
15 Employees for all hours worked and violations of California wage and hour laws, including but not
16 limited to, Labor Code sections 226.2 and/or 1197. Based on information and belief,
17 DEFENDANTS further failed to include this information on these employees' wage statements
18 required by Labor Code section 226.2.

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

24 56. Based on information and belief, DEFENDANTS implemented a time-rounding
25 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
26 compensable time because the time-rounding system implemented by DEFENDANTS would
27 almost always, if not always, result in understating actual compensable work time.

28 57. For example, DEFENDANTS issued wage statements to PLAINTIFF that

1 demonstrate DEFENDANTS rounded PLAINTIFF's total hours worked to at least the nearest half
2 and/or whole hour during including but not limited to pay periods for the following pay dates:
3 7.27.23 (showing precisely 38.50 total hours worked); 8.3.23 (showing precisely 32.00 total hours
4 worked) 8.10.23 (showing precisely 40.00 total hours worked); 8.12.23 (showing precisely 30.00
5 total hours worked) and 8.17.23 (showing precisely 30.00 total hours worked). Based on
6 information and belief, DEFENDANTS rounded PLAINTIFF's total hours worked to at least the
7 nearest half and/or whole hour during most if not all pay periods during PLAINTIFF's employment,
8 resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the
9 underpayment of wages owed to PLAINTIFF.

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

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

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

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

1 wages owed to PLAINTIFF and other Aggrieved Employees.

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

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

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

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

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

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

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

16 69. For example, when PLAINTIFF worked more than ten hours in a shift, PLAINTIFF
17 was not provided with a second meal period.

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

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

28 72. Based on information and belief, DEFENDANTS had actual and/or constructive

1 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods
2 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
3 violation of California's meal period laws.

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

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

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

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

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

26 78. For example, based on information and belief, PLAINTIFF and/or other Aggrieved
27 Employees were frequently required to take on-duty rest periods and/or cut her rest periods short
28 due to the need to complete assigned job duties.

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

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

7 81. Based on information and belief, DEFENDANTS implemented policies and/or
8 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
9 DEFENDANTS' control during rest periods.

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

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

20 84. **Cooldown Recovery Period Violations.** California Code of Regulations, Title 8,
21 section 3395 mandates that all employers with “outdoor places of employment” implement a heat
22 illness prevention program that includes, among other requirements, providing workers “cool-
23 down” periods of at least five minutes in the shade. Specifically, section 3395 provides that
24 “employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of
25 no less than five minutes at a time when they feel the need to do so to protect themselves from
26 overheating” and that “such access to shade shall be permitted at all times.” Under California Labor
27 Code section 226.7, if an employer fails to provide an employee a recovery period, the employer
28 shall pay the employee one additional hour of pay at the employee’s regular rate of compensation

1 for each workday that the meal or rest or recovery period is not provided.

2 85. Based on information and belief, Aggrieved Employees were required to spend
3 multiple hours at a time outdoors in significantly high temperature heat conditions. DEFENDANTS
4 failed to provide proper heat illness prevention training and/or heat illness
5 policies/practices/programs as required by California's Heat Illness Prevention statute, Title 8
6 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
7 California's Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
8 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
9 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
10 shade for extended periods of time. In addition, DEFENDANTS, failed to pay PLAINTIFF and
11 other Aggrieved Employees with an additional hour of pay at PLAINTIFF's regular rate of pay for
12 each missed cooldown recovery period.

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

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

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

28 89. DEFENDANTS' failure to provide suitable resting facilities to Aggrieved

1 Employees violated and continue to violate the applicable Wage Order, section 13(B) and the
2 California Labor Code, including but not limited to section 1198.

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

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

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

23 **93.** For example, as described herein, based on information and belief, DEFENDANTS
24 failed to incorporate all forms of non-discretionary compensation earned during the pay period,
25 including but not limited to, non-discretionary bonus/incentive pay, piece rate pay, multiple base
26 rates of pay and/or other non-discretionary compensation into the overtime pay rate calculation, and
27 as such, failed to display the proper overtime rate(s) for each hour of overtime worked by Aggrieved
28 Employees.

1 94. Based on information and belief, DEFENDANTS issued wage statements that failed
2 to list the number of piece rate units completed/earned during the pay period and the applicable rate
3 of pay for each piece rate unit.

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

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

10 97. For example, based on information and belief, wage statements issued by
11 DEFENDANTS failed to list the inclusive dates of the pay period for which the Aggrieved
12 Employee is being paid. For example, based on information and belief, at times, DEFENDANTS
13 issued wage statements to Aggrieved Employees containing payment for hours worked during
14 previous pay periods, yet DEFENDANTS' wage statements do not include the inclusive dates of
15 the accurate pay period for that retroactive pay, further failing to list the total hours worked for the
16 pay period, including but not limited to, the total hours worked for the pay period the retroactive
17 pay corresponds with. For example, based on information and belief, DEFENDANTS' wage
18 statements provided to Aggrieved Employees list a category for "Retro" and/or retroactive pay
19 without including the inclusive dates of the accurate pay period for that retroactive pay, further
20 failing to list the total hours worked for the pay period, including but not limited to, the total hours
21 worked for the pay period the retroactive pay corresponds with, in violation of including but not
22 limited to, Labor Code sections 226(a)(2) and/or 226(a)(6).

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

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

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

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

12 102. **Failure to Produce Employment Records.** Based on information and belief,
13 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
14 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code
15 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
16 counsel, sent a written request for payroll and personnel records to DEFENDANTS. Yet,
17 DEFENDANTS failed to timely produce complete records, including but not limited to, time
18 records, within the time periods delineated by California labor law. Based on information and belief,
19 DEFENDANTS failed and continue to fail to timely produce complete time, pay, and personnel
20 records when requested by other Aggrieved Employees.

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

1 104. DEFENDANTS have failed and continue to fail to keep accurate and complete
2 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
3 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
4 employer control during unpaid meal periods, failure to record the true start and end times of meal
5 periods, shift start times and shift end times, and other off-the-clock work policies and practices
6 described herein.

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

19 106. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
20 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
21 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
22 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
23 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
24 226.2.

25 107. **Unreimbursed Business Expenses.** Based on information and belief,
26 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
27 as a direct consequence of the performance of their job duties without providing reimbursement, in
28 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other

1 Aggrieved Employees were improperly required to provide and maintain work tools that are
2 supposed to be the responsibility of the employer.

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

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

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

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

27 112. Based on information and belief, at times, Aggrieved Employees were not
28 reimbursed for the business use of their personal vehicles, including but not limited to, mileage,

1 wear and tear, and/or cost of fuel when they were required to drive around and/or between job sites,
2 and/or use their personal vehicles in carrying out the duties assigned by DEFENDANTS. As such,
3 DEFENDANTS failed to compensate Aggrieved Employees at the legally mandated Internal
4 Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

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

9 114. Based on information and belief, DEFENDANTS regularly failed to reimburse and
10 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
11 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
12 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
13 assigned by DEFENDANTS.

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

18 116. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
19 provides as follows:

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

28 118. Aggrieved Employees were not paid reporting time wages in accordance with

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

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

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

12 121. (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.

20 122. 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.

25 123. 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.

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

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

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

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

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

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

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

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

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

27 133. All applicable IWC Wage Orders, Section 14(A-B) provides:
28

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

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

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

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

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

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

26 138. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
27 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
28 were due and owing upon termination or resignation. Based on information and belief,

1 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
2 requirements of Labor Code sections 201-202.

3 139. Upon separation of employment, Aggrieved Employees' final paychecks were not
4 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
5 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
6 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
7 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
8 accrued rates. For example, PLAINTIFF's employment separated on or around August 13, 2023,
9 however, DEFENDANTS' last wage statement for PLAINTIFF is dated August 17, 2023.
10 Moreover, PLAINTIFF's late final paycheck was devoid of all wages owed including but not limited
11 to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick
12 leave and/or paid time off wages at the properly accrued rates.

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

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

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

1 Labor Code Section 208.

2 143. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

3 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

4 144. Based on information and belief, DEFENDANTS required Aggrieved Employees to
5 agree in writing to unlawful conditions of employment including but not limited to unlawful non-
6 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements,
7 unlawful releases and/or waivers, including but not limited to, unlawful meal period waivers,
8 unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful
9 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
10 violation of Labor Code section 432.5.

11 145. Based on information and belief, DEFENDANTS ordered unlawful financial credit
12 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
13 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
14 employment, in violation of California and Federal law, which results in a further violation of Labor
15 Code section 432.5.

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

25 147. Based on information and belief, DEFENDANTS required Aggrieved Employees to
26 agree in writing to a background check which failed to abide by the requirements set forth in CA
27 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
28 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,

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

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

10 149. Based on further information and belief, DEFENDANTS also required Aggrieved
11 Employees to agree in writing to provide ongoing consent to DEFENDANTS 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.

15 150. 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.

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

20 Unlawful Inquires into Criminal History

21 152. 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.

25 153. 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, and in violation of Labor code section 432.5.

2 Unlawful PAGA Waiver

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

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

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

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

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

25 159. As such, DEFENDANTS violated including but not limited to, Labor Code sections
26 432.6 and/or 432.5 by virtue of including but not limited to, requiring Aggrieved Employees to sign
27 invalid meal period waivers as a condition of employment and/or for threatening, retaliating and/or
28 discriminating against and/or terminating Aggrieved Employees because of their refusal to waive

1 their meal period rights.

2 160. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
3 engaged in these same herein described unlawful practices, which led to violations of the California
4 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
5 unlawful practices to all of its employees that it applied to PLAINTIFF.

6
7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE**
9 **SECTIONS 2698, *ET SEQ.***

10 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against**
11 **all Defendants)**

12 161. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

13 **Failure to Keep Accurate Records**

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

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

23 164. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
24 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
25 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
26 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
27 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
28

1 period during which the referenced statutes and Wage Order provisions were violated.¹

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

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

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

18 167. Personnel Records. In addition to their right to time and pay records, employees, and
19 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
20 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
21 section 432 further specifies that employers must furnish copies of all employment records bearing
22 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
23 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days
24 from the date the employer receives a written request." An employer's failure to comply within this

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 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
2 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

3 168. Based on information and belief, DEFENDANTS fail to timely produce or make
4 available Aggrieved Employees' personnel records and/or payroll records, including but not limited
5 to, time records, when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the
6 applicable Wage Order. These violations subject DEFENDANTS to penalties under Labor Code
7 sections 226, 1198.5, and 2699.

8 **Meal Period Violations**

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

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

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

25 172. Employers must pay employees an additional hour of wages at the employees'
26 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
27 meal period, first meal period provided after five (5) hours, second meal period provided after 10
28 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to

1 provide an employee a meal period in accordance with the applicable provision of this Order, the
2 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
3 for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

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

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

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

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

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

25 178. These unlawful meal period policies and practices result in violations of Labor Code
26 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
27 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
28 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §

1 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

2 **Rest Period Violations**

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

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

27 181. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
28 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained

1 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
2 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
3 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
4 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

21 **Cooldown Recovery Period Violations**

22 186. California Code of Regulations, Title 8, section 3395 mandates that all employers
23 with "outdoor places of employment" implement a heat illness prevention program that includes,
24 among other requirements, providing workers "cool-down" periods of at least five minutes in the
25 shade. Specifically, section 3395 provides that "employees shall be allowed and encouraged to take
26 a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the
27 need to do so to protect themselves from overheating" and that "such access to shade shall be
28 permitted at all times." Under California Labor Code section 226.7, if an employer fails to provide

1 an employee a recovery period, the employer shall pay the employee one additional hour of pay at
2 the employee's regular rate of compensation for each workday that the meal or rest or recovery
3 period is not provided.

4 187. Based on information and belief, Aggrieved Employees were required to spend
5 multiple hours at a time outdoors in significantly high temperature heat conditions. DEFENDANTS
6 failed to provide proper heat illness prevention training and/or heat illness
7 policies/practices/programs as required by California's Heat Illness Prevention statute, Title 8
8 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
9 California's Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
10 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
11 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
12 shade for extended periods of time. In addition, DEFENDANTS, failed to pay Aggrieved
13 Employees with an additional hour of pay at their respective regular rate(s) of pay for each missed
14 cooldown recovery period.

15 **Failure to Provide Suitable Resting Facilities**

16 188. Per section 13 of all applicable IWC Wage Orders, employees shall be provided with
17 suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities
18 shall be provided in an area separate from the toilet rooms and shall be available to employees during
19 work hours."

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

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

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

6 **Minimum and Overtime Wage Violations**

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

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

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

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

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

1 of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.

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

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

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

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

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

22 (3) For employers of 25 or fewer employees:

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

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

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

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

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

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

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

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

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

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

1 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
2 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
3 violation of California's overtime laws.

4 201. Based on information and belief, DEFENDANTS sometimes paid Aggrieved
5 Employees multiple rates of base pay in one workweek but failed to incorporate all multiple rates
6 of base pay into the regular rate of pay for purposes of calculating the owed overtime rate. For
7 example, on information and belief, at times, Aggrieved Employees earned multiple base pay rates
8 during the same workweek, yet DEFENDANTS failed to incorporate all/both base pay rates into
9 the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the
10 miscalculation and underpayment of overtime wages owed to Aggrieved Employees.

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

18 203. For example, based on information and belief, at times, PLAINTIFF and other
19 Aggrieved Employees earned non-discretionary bonuses/incentive pay and/or piece-rate pay and/or
20 other non-discretionary compensation during pay periods in which they worked overtime, however,
21 DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate(s) of
22 pay for purposes of calculating the owed overtime rate(s), resulting in the miscalculation and
23 underpayment of overtime wages owed to PLAINTIFF and other Aggrieved Employees, further
24 resulting in wage statement violations, described herein.

25 204. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
26 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
27 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
28 Wage Orders, section 20.

1 **Violation of Labor Code Section 226.2**

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

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

19 **Statutory Wage Violations**

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

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

3 **Refusal to Make Payment**

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

12 **Standard Conditions of Labor Violations**

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

21 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

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

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

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

7 **Wage Statement Violations**

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

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

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

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

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

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

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

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

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

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

1 were paid for all hours worked.

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

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

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

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

19 **Unlawful Deductions**

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

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

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

7 **Reporting Time Pay Violations**

8 234. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

27 **Violation of California Day of Rest Law**

28 238. Under California law, every employee in California is "entitled" to "one day's rest
52

1 [from labor] in seven"; and, no employer may "cause" its employees "to work more than six days in
2 seven." See Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of
3 the foregoing sections is a misdemeanor.

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

10 **Seating Violations**

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

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

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

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

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

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

28 244. Moreover, based on information and belief, the nature of the work reasonably

1 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
2 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
3 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
4 of seats would not interfere with the performance of their duties.

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

12 **Sick Leave Violations**

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

20 247. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
21 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
22 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
23 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
24 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

1 249. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
2 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
3 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
4 were entitled to the maximum number of hours accruable.

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

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

11 252. On information and belief, PLAINTIFF alleges that all of these practices were
12 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

25 255. California Labor Code section 227.3 provides that when an employer policy provides
26 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
27 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
28 employee's final rate in accordance with such contract of employment or employer policy respecting

1 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
2 off upon termination.

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

10 **Untimely Payment of Final Wages**

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

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

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

1 sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all
2 owed vacation pay/paid time off paid at the final rate including non-discretionary compensation,
3 including but not limited to, any shift differential pay).

4 260. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
5 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
6 256.

7 **Violation of Labor Code Section 208**

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

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

17 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

28 264. The California Labor Code places certain procedural and substantive limits on an

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

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

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

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

24 268. Based on further information and belief, DEFENDANTS knew that requiring
25 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
26 condition of obtaining and/or holding employment was unlawful.

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

1 Unlawful Inquires into Criminal History

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

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

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

16 Unlawful PAGA Waiver

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

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

26 275. Moreover, the California Supreme Court has ruled that a court cannot compel
27 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an
28 individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is

1 no individual component to a PAGA action because ‘every PAGA action ... is a representative
2 action on behalf of the state.’”)

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

8 **Violation of Labor Code Section 432.6**

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

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

16 279. Labor Code Section 432.6(b) provides in pertinent part:

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

19 281. Based on information and belief, DEFENDANTS require/required Aggrieved
20 Employees to waive their right to first and/or second meal periods as a condition of working for
21 DEFENDANTS. Based on further information and belief, if/when Aggrieved Employees do not
22 abide by DEFENDANTS’ policies and rules, of which this waiver is included as part of
23 DEFENDANTS’ policies/rules, said Aggrieved Employees are subject to disciplinary action, up to
24 and including termination. As such, DEFENDANTS violated including but not limited to, Labor
25 Code sections 432.6 and/or 432.5 by virtue of including but not limited to, requiring Aggrieved
26 Employees to sign invalid meal period waivers as a condition of employment and/or for threatening,
27 retaliating and/or discriminating against and/or terminating Aggrieved Employees because of their
28 refusal to waive their meal period rights.

1 282. Under the provisions of PAGA and the above mentioned Labor Code sections,
2 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
3 226.2, 226.7, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 512, 551, 552, 558, 558.1, 1174,
4 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable
5 Wage Orders as well as all interpretations of these laws by California Courts and administrative
6 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
7 the following penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: February 15, 2024

CROSNER LEGAL, PC

By: 

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