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OLGA HUIZAR on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

OLGA HUIZAR, an individual, on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiff,

vs.

BAYVIEW VINEYARDS CORPORATION, a
California corporation, LAIRD FAMILY
ESTATE LLC, a California Limited Liability
Company, and DOES 1-50, inclusive,

Defendant.

) Case No.: 24CV000113

) **REPRESENTATIVE ACTION**

) **Violation of the Private Attorneys General**
) **Act of 2004, Cal. Labor Code §2698 *et seq.***

Plaintiff OLGA HUIZAR brings this PAGA representative action complaint on behalf of
herself, all aggrieved employees, and the State of California as a Private Attorneys General, and
alleges as follows:

NATURE OF THE ACTION

1. Plaintiff OLGA HUIZAR worked as an employee for Defendant BAYVIEW VINEYARDS CORPORATION and LAIRD FAMILY ESTATE LLC and Does 1-50 (collectively “Defendant”). Defendant operates a vineyard, winery, and related operations. Plaintiff OLGA HUIZAR worked for Defendant as a laborer working on a full-time, hourly non-exempt basis through March 27, 2023. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former hourly, nonexempt employees of Defendant within one year of serving notice on the LWDA to the present are aggrieved employees (“AGGRIEVED EMPLOYEES”).

2. Defendant failed to comply with California Labor Code requirements due to erroneous, willful, and intentional employment practices and policies. Plaintiff brings this representative action on behalf of herself, all other similarly situated aggrieved employees, and the State of California, based upon the claims articulated below. Plaintiff provided notice of her claims pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

3. Among other things, DEFENDANTS (1) failed and continue to fail to keep accurate and complete time records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continue to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continue to fail to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium

1 pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused
2 and continue to refuse to make and/or falsely denied the amount of payments due to PLAINTIFF
3 and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay;
4 (7) failed and continue to fail to place PLAINTIFF and NON-EXEMPT AGGRIEVED
5 EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick
6 pay; (8) failed and continue to fail to provide legally compliant wage statements to PLAINTIFF
7 and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES;
8 (9) made unlawful deductions from PLAINTIFF's and other NON-EXEMPT AGGRIEVED
9 EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continue
10 to fail to timely pay wages to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and
11 EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of
12 employment; (11) failed and continue to fail to reimburse PLAINTIFF and NON-EXEMPT
13 AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses
14 incurred on behalf of DEFENDANTS; (12) conducted and continue to conduct illegal criminal
15 and/or financial background checks as a condition of PLAINTIFF's, NON-EXEMPT
16 AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued
17 employment; (13) required and continue to require PLAINTIFF and NON-EXEMPT
18 AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not
19 resulting in convictions and/or to disclose convictions prior to extending an offer of employment
20 and/or otherwise impermissibly inquired and continue to inquire into PLAINTIFF's, NON-
21 EXEMPT AGGRIEVED EMPLOYEES', and/or EXEMPT AGGRIEVED EMPLOYEES'
22 criminal history on their employment applications and sign off on same as a condition of
23 employment; (14) failed and continue to fail to provide suitable seating; and (15) required and
24 continue to require PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT
25 AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a
26 condition of employment. Further descriptions of the above-mentioned violations and others are
27 explained below. Defendant is therefore liable for civil penalties under the Cal. Labor Code,
28

1 including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described
2 more fully herein.

3 **THE PARTIES**

4 4. Plaintiff OLGA HUIZAR is a resident of the State of California and worked for
5 Defendant as a laborer working on a full time, hourly non-exempt basis through March 27, 2023.

6 5. Defendant BAYVIEW VINEYARDS CORPORATION is a California corporation
7 authorized to do business and doing business in California with the capacity to sue and to be sued,
8 and doing business, in the county of Napa, State of California.

9 6. Defendant LAIRD FAMILY ESTATE LLC is a California limited liability company
10 authorized to do business and doing business in California with the capacity to sue and to be sued,
11 and doing business, in the county of Napa, State of California.

12 7. Plaintiff is unaware of the true names, capacities, relationships, and extent of
13 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
14 informed and believes and thereon alleges that said Defendant is legally responsible for the
15 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
16 will amend this complaint when their true names and capabilities are ascertained.

17 8. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
18 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
19 of the representative class, and exercised control over their wages, hours, and working conditions.
20 Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects
21 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
22 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
23 to the other Defendants.

24 **JURISDICTION AND VENUE**

25 9. Venue is proper in this judicial district because Defendant conducts business in this
26 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
27 in this case that arose in this county.

1 10. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of
2 the Superior Court and will be established according to proof at trial. Based on information,
3 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
4 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
5 (\$25,000).

6 11. The California Superior Court has jurisdiction in this matter because Plaintiff is a
7 resident of California and Defendant is qualified to do business in California and regularly conduct
8 business in California. Further, there is no federal question at issue as the claims herein are based
9 solely on California law.

10 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

11 12. During the relevant time-period, Defendant committed various violations of the
12 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
13 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

14 13. This representative action represents over one hundred current and former hourly,
15 nonexempt aggrieved employees.

16 14. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
17 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
18 numerous Labor Code sections, as set forth more fully below.

19 15. Plaintiff and all current and former hourly, nonexempt employees within one year of
20 filing this action to the present are aggrieved employees within the meaning of Labor Code 2699,
21 *et seq.* (See Labor code §2699(c).)

22 16. Defendant, and each of them, have committed the following violations of the California
23 Labor Code:

24 **Record Keeping Violations**

25 17. California Labor Code section 1174 requires employers to keep "accurate and
26 complete" payroll records showing, among other things, the hours worked daily by PLAINTIFF
27 and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7
28

1 similarly requires employers to keep accurate time records reflecting the times during which
2 allowed meal periods were provided each day.

3 18. Based on information and belief, DEFENDANTS failed, and continue to fail, to keep
4 accurate and complete payroll records as required by law, including but not limited to the following
5 records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF
6 and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time
7 records of meal periods, and accurate itemized wage statements. Based on information and belief,
8 DEFENDANTS failed and continue to fail to keep accurate and complete records showing total
9 hours worked by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of
10 DEFENDANTS' time rounding and/or auto deduction policies and practices and/or other off-the-
11 clock work policies and practices.

12 19. DEFENDANTS failed and continue to fail to keep accurate and complete records
13 showing total hours worked by virtue of DEFENDANTS' failure to relieve PLAINTIFF and NON-
14 EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control for unpaid
15 meal periods, resulting in unpaid hours worked. Based on information and belief, DEFENDANTS
16 further failed, and continue to fail, to record the true start and end times of PLAINTIFF's and
17 NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

18 20. Based on further information and belief, DEFENDANTS further failed and continue to
19 fail, to record the true start and end times of PLAINTIFF and NON-EXEMPT AGGRIEVED
20 EMPLOYEES' work shifts. Additionally, DEFENDANTS failed, and continue to fail to keep
21 accurate records and issue accurate wage statements by not documenting accrued sick time for
22 PLAINTIFF and NON- EXEMPT AGGRIEVED EMPLOYEES. DEFENDANTS' failure to keep
23 "accurate and complete" payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED
24 EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage
25 Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code
26 sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage
27 Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil
28 penalty.

1 21. Time and Pay Records. Labor Code section 226 and all applicable IWC Wage Orders,
2 section 7 require that employers keep the following information on file for each employee for a
3 minimum of three years: The employee's dates of employment; the employee's hourly rates and
4 the corresponding number of hours worked by the employee at each hourly rate, when the
5 employee begins and ends each work period (including meal periods) and split intervals; total
6 hours worked by the employee; all deductions; gross wages earned; and net wages earned. Section
7 (b) of Labor Code section 226 further requires employers to "afford current and former employees
8 the right to inspect or receive a copy of records pertaining to their employment upon reasonable
9 request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who
10 receives a written or oral request to inspect or receive a copy of records pursuant to subdivision
11 (b) pertaining to a current or former employee shall comply with the request as soon as practicable,
12 but no later than 21 calendar days from the date of the request. A violation of this subdivision is
13 an infraction." An employer's failure to comply within this timeframe entitles a current or former
14 employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code
15 section 226(f).

16 22. Personnel Records. In addition to their right to time and pay records, employees, and
17 their representatives, have the right to inspect and receive a copy of their personnel files pursuant
18 to Labor Code section 1198.5. This statute applies to both former and current employees. Labor
19 Code section 432 further specifies that employers must furnish copies of all employment records
20 bearing the employee's signature. Labor Code section 1198.5 also requires that the file be made
21 available for inspection or receipt within a "reasonable" amount of time, but "not later than 30
22 calendar days from the date the employer receives a written request." An employer's failure to
23 comply within this timeframe likewise entitles a current or former employee to recover a seven
24 hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k). Based on
25 information and belief, DEFENDANTS failed to timely produce or make available a current or
26 former employee's personnel records and/or payroll records when requested pursuant to Labor
27 Code sections 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and
28 belief, DEFENDANTS failed and continue to fail to timely produce complete payroll and

1 personnel records when requested by NON-EXEMPT AGGRIEVED EMPLOYEES and/or
2 EXEMPT AGGRIEVED EMPLOYEES. These violations subject DEFENDANTS to penalties
3 under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and
4 Wage Order provision, for each NON- EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT
5 AGGRIEVED EMPLOYEE, results in a separate civil penalty.

6 **Failure to Provide Compliant Meal Breaks**

7 23. California law requires employers to provide employees a duty-free, uninterrupted
8 thirty (30) minute meal period when an employee works more than five (5) hours in a workday,
9 and it must be provided within the first five (5) hours the employee works. Lab. Code section 512
10 (and all applicable IWC Wage Orders), section 11(A) and (C); Brinker Restaurant Corp. v.
11 Superior Court (2012) 53 Cal.4th 1004. Employers must also provide employees with a second
12 duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10)
13 hours in a workday, and it must be provided before the end of the 10th hour of work. Ibid. Meal
14 periods can be waived, but only under the following circumstances: (1) if an employee's total work
15 period in a day is over five (5) hours but no more than six (6) hours, the required meal period may
16 be waived by mutual consent of the employer and employee, and (2) if an employee's total work
17 period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal
18 period may be waived by mutual consent of the employer and employee, but only if the first meal
19 period was not waived. Ibid. Upon information and belief, PLAINTIFF did not sign a valid meal
20 period waiver throughout PLAINTIFF's employment by DEFENDANTS. Employers covered by
21 any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees
22 for at least one meal period for shifts over five hours (see above), and (2) to record having done
23 so. If the employer fails to properly record a valid meal period, it is presumed that no meal period
24 was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be
25 recorded"); Brinker, supra, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's
26 records show no meal period for a given shift over five hours, a rebuttable presumption arises that
27 the employee was not relieved of duty and no meal period was provided").

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

8 25. PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently
9 worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.
10 PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally
11 compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT
12 AGGRIEVED EMPLOYEES were consistently unable to take timely, off-duty, thirty-minute,
13 uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods,
14 and/or work through part or all their meal periods due to understaffing, the nature and constraints
15 of their job duties and/or commentary from supervisors pressuring them to take non-compliant
16 meal breaks or skip meal breaks completely. For example, based on information and belief, NON-
17 EXEMPT AGGRIEVED EMPLOYEES were sometimes forced to take late meal periods in order
18 to complete assigned job duties. Based on information and belief, NON-EXEMPT AGGRIEVED
19 EMPLOYEES were at times interrupted during purported meal periods and/or had meal periods
20 cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned job
21 duties. For example, PLAINTIFF was restricted to DEFENDANTS' premises during unpaid meal
22 periods and as such was not relieved of all duties and DEFENDANTS' control during unpaid,
23 purportedly off-duty meal periods, resulting in denied meal periods as well as DEFENDANTS'
24 failure to compensate PLAINTIFF for all hours worked and the underpayment of minimum wages
25 and overtime wages owed to PLAINTIFF.

26 26. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES
27 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or
28 had their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or

1 otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints
2 of their job duties, and/or the need to meet DEFENDANTS' goals and expectations.

3 27. Based on information and belief, DEFENDANTS implemented policies and/or
4 practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and
5 DEFENDANTS' control during unpaid meal periods.

6 28. Based on information and belief, DEFENDANTS required NON-EXEMPT
7 AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time
8 which DEFENDANTS failed to take into account when scheduling meal periods for NON-
9 EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late,
10 in part due to unaccounted pre-shift off-the-clock work.

11 29. Based on information and belief, DEFENDANTS had actual and/or constructive
12 knowledge that their policies and practices resulted in the denial of uninterrupted meal periods
13 which were free of DEFENDANTS' control owed to PLAINTIFF and other NON-EXEMPT
14 AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

15 30. Based on information and belief, per DEFENDANTS' uniform policy and practice,
16 NON- EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not
17 receive a second legally compliant thirty (30) minute second meal break.

18 31. Based on information and belief, despite DEFENDANTS' failure to provide lawful
19 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
20 times of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods
21 and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise
22 unlawful meal periods (including meal periods restricted to DEFENDANTS' premises), despite
23 having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT
24 AGGRIEVED EMPLOYEES did not receive lawful meal periods.

25 32. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
26 records of the true start and end times of PLAINTIFF's and NON-EXEMPT AGGRIEVED
27 EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were
28 recorded, DEFENDANTS illegally rounded the start and end times of purported meal periods

1 resulting in PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid
2 for all time worked as well as late and/or shortened meal periods. See *Donohue v. AMN Services,*
3 LLC (2021) 11 Cal.5th 58.

4 33. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
5 other NON- EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal
6 periods. Based on further information and belief, DEFENDANTS did not have a compliant written
7 meal break policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability
8 for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an
9 employer adopted a uniform corporate break policy that failed to give full effect to California law
10 and the applicable Wage Order requirements. The fact that employees may legally waive meal
11 breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

12 34. PLAINTIFF is further informed and believes and thereon alleges that DEFENDANTS
13 had actual and/or constructive knowledge that their time-rounding and/or auto-deduction policies
14 and practices resulted in the denial of lawful meal periods owed to PLAINTIFF and other NON-
15 EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

16 35. DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED
17 EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for
18 each workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal
19 period premium at all for each workday a lawful meal period was not provided and/or failed to pay
20 the proper meal period premium for failure to incorporate all non-discretionary remuneration,
21 including but not limited to, bonuses, shift differential pay and/or other non-discretionary
22 compensation into the regular rate or compensation for purposes of calculating the owed meal
23 period premium.

24 36. The aforementioned conduct results in violations of Labor Code sections 226.7, 512,
25 and 1198- 1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all
26 applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under
27 Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each
28 violation of each Labor Code section and Wage Order provision results in a separate civil penalty,

for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ DEFENDANTS' failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Failure to Provide Rest Breaks

37. California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. See applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

38. Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest

1 area, employees are entitled to a full ten minutes of rest in the rest area). Id.; see also, *Bufile v.*
2 *Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly
3 communicate the authorization and permission [to take rest periods] to their employees.”).

4 39. DEFENDANTS did not properly authorize and provide PLAINTIFF and other NON-
5 EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four
6 (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle
7 of the work period, as required by law.

8 40. PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not
9 adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest
10 breaks per California law. Based on information and belief, DEFENDANTS had no policy in place
11 nor instruction as to the taking of duty-free rest periods. Based on information and belief,
12 DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have
13 any sort of compliant rest period policy in practice.

14 41. For example, PLAINTIFF was not provided with compliant rest periods during
15 PLAINTIFF’s employment due to including but not limited to, being restricted to DEFENDANTS’
16 premises/PLAINTIFF’s assigned field area(s) during any rest periods.

17 42. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES’ rest
18 periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing,
19 the nature and constraints of their job duties, and/or due to commentary from supervisors/
20 managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely
21 or otherwise take non-compliant rest periods.

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

24 44. Based on information and belief, DEFENDANTS implemented policies and/or
25 practices that failed to relieve PLAINTIFF and other NON-EXEMPT AGGRIEVED
26 EMPLOYEES of all duties and DEFENDANTS’ control during rest periods.

1 45. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were
2 pressured to complete their work duties according to a designated schedule such that rest breaks
3 were only taken once tasks were completed, and/or as time permitted.

4 46. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in which
5 NON- EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest
6 period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th
7 864, 872. DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED
8 EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each
9 workday a proper rest period was not provided. DEFENDANTS either failed to pay a rest period
10 premium at all for each workday a lawful rest period was not provided and/or failed to pay the
11 proper rest period premium for failure to incorporate all non-discretionary remuneration, including
12 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
13 the regular rate of compensation for purposes of calculating the owed rest period premium. The
14 aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and
15 all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil
16 penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each
17 violation of each Labor Code section and Wage Order provision results in a separate civil penalty,
18 for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the
19 referenced statutes and Wage Order provisions were violated.

20 **Cooldown Recovery Period Violations**

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

the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided. Based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to spend multiple hours at a time outdoors in significantly high temperature heat conditions. DEFENDANTS failed to provide proper heat illness prevention training and/or heat illness policies/practices/programs as required by California's Heat Illness Prevention statute, Title 8 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by California's Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS maintained a policy and practice of not permitting necessary time for cooldown recovery breaks, and as a result, NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain outdoors with little to no access to shade for extended periods of time. In addition, DEFENDANTS, failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with an additional hour of pay at PLAINTIFF's regular rate of pay for each missed cooldown recovery period.

48. Failure to Provide Suitable Resting Facilities. Per section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours." DEFENDANTS' locations/facilities are generally similar in layout and design, and there was, and continue to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. DEFENDANTS could have provided PLAINTIFF and NON- EXEMPT AGGRIEVED EMPLOYEES with a resting facility within DEFENDANTS' facilities/locations with reasonable or no modification, but instead denied and continue to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, PLAINTIFF and other NON- EXEMPT AGGRIEVED EMPLOYEEES were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises which are not designated or reserved for rest, such as their personal vehicles. DEFENDANTS did not provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest

1 periods. DEFENDANTS' failure to provide suitable resting facilities to PLAINTIFF and NON-
2 EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage
3 Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

4 **Failure to Pay Minimum Wage**

5 49. Notwithstanding any agreement to work for a lesser wage, any employee receiving less
6 than the legal minimum wage or the legal overtime compensation applicable to the employee is
7 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or
8 overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit."
9 Labor Code section 1194.

10 50. Labor Code section 1197 states the California requirement that employees must be paid
11 at least the minimum wage fixed by the Commission, and any payment of less than the minimum
12 wage is unlawful. The minimum wage standard applies to each hour employees worked for which
13 they were not paid. Pursuant to section 4 of the applicable Wage Order, "Every employer shall pay
14 to each employee not less than the applicable minimum wage for all hours worked in the payroll
15 period..." The applicable Wage Order defines "hours worked" as "the time during which an
16 employee is subject to the control of an employer, and includes all the time the employee is
17 suffered or permitted to work, whether or not required to do so." See §2 of all applicable Wage
18 Orders. Therefore, employers are required to pay employees for all time spent subject to the control
19 of the employer and all time the employee is suffered or permitted to work. An employer's failure
20 to pay for any particular hour worked by an employee is unlawful even if averaging an employee's
21 total pay over all hours worked, paid or not, results in an average hourly wage above minimum
22 wage. Armenta v. Osmose, Inc. (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action
23 under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less
24 than the minimum wage fixed by an order of the commission or by statute, an employee shall be
25 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
26 interest thereon..." Cal. Lab. Code § 1194.2.

27 51. DEFENDANTS failed to compensate PLAINTIFF and other NON-EXEMPT
28 AGGRIEVED EMPLOYEES for all hours worked by virtue of DEFENDANTS' automatic

deduction and time rounding policies for shift start and shift end times and meal period start and end times, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

52. Based on information and belief, DEFENDANTS implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to DEFENDANTS' control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

53. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

54. For example, DEFENDANTS required PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES to forego recording all worktime by, for example, requiring PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES to sign off on a daily written time sheet that merely acknowledged their attendance for their scheduled work hours and/or listed their scheduled hours for the day as opposed to actual hours worked.

55. For example, based on information and belief, DEFENDANTS instructed PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES to notate their scheduled hours worked each day on a written time sheet during their purported meal period.

56. Notably, DEFENDANTS' wage statements and/or time records for PLAINTIFF for, including but not limited to, the following dates, show exactly 8.00 total regular hours worked: January 23, 2023, January 24, 2023, January 26, 2023, and January 27, 2023.

57. Based on information and belief, DEFENDANTS recorded and/or required PLAINTIFF to record only PLAINTIFF's scheduled hours worked rather than actual hours worked and/or rounded PLAINTIFF's total hours worked to the nearest quarter, half and/or whole hour

1 for most if not all workdays, resulting in DEFENDANTS' failure to pay PLAINTIFF for all hours
2 worked and the underpayment of minimum wages and overtime wages owed to PLAINTIFF.

3 58. Based on information and belief, PLAINTIFF and other NON-EXEMPT
4 AGGRIEVED EMPLOYEES were consistently required to perform pre-shift and/or post-shift
5 work that was neither recorded nor compensated.

6 59. For example, based on information and belief, NON-EXEMPT AGGRIEVED
7 EMPLOYEES were required to be at their field areas/respective workstations at their scheduled
8 shift start time or face discipline. As such, NON-EXEMPT AGGRIEVED EMPLOYEES typically
9 arrived at work at least five (5) to seven (7) minutes prior to their scheduled shift start times each
10 day so that they could perform any required pre-shift work, including but not limited to, setting up
11 shade tents as directed by DEFENDANTS, bestowing their personal items in the employee storage
12 area, retrieving/compiling their work tools/equipment (e.g., knives, blades, scissors,
13 baskets/containers, tractors) making any necessary adjustments to their tools/equipment and/or
14 perform any required maintenance tasks, don work clothing/their uniforms and protective
15 equipment (aprons, gloves, protective chaps, rain gear, hairnets and/or face masks), and/or
16 complete other work tasks so as to be ready to be at their respective work stations at their scheduled
17 shift start times as mandated by DEFENDANTS. This pre-shift off-the-clock work was neither
18 recorded nor compensated resulting in the substantial underpayment of wages owed to
19 PLAINTIFF and other NON- EXEMPT AGGRIEVED EMPLOYEES.

20 60. For example, DEFENDANTS required PLAINTIFF to assist in setting up shade tents
21 prior to clocking in for the start of PLAINTIFF's shifts, resulting in at least approximately five (5)
22 to seven (7) minutes of pre-shift off-the-clock work on many if not all workdays and the
23 underpayment of minimum wages and overtime wages owed to PLAINTIFF. Based on
24 information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to
25 perform pre-shift off-the- clock work including without limitation, assisting in setting up shade
26 tents and/or completing other work tasks off-the-clock as directed by DEFENDANTS, resulting
27 in at least approximately five (5) to seven (7) minutes of pre-shift off-the-clock work for each
28 NON-EXEMPT AGGRIEVED EMPLOYEE during most if not all days worked during their

1 respective employments and the underpayment of minimum wages and overtime wages owed to
2 NON-EXEMPT AGGRIEVED EMPLOYEES.

3 61. Based on information and belief, PLAINTIFF and other NON-EXEMPT
4 AGGRIEVED EMPLOYEES were also required to perform post-shift off-the-clock work that was
5 neither recorded nor compensated.

6 62. For example, based on information and belief, NON-EXEMPT AGGRIEVED
7 EMPLOYEES put away their work tools/equipment, take down shade tents and/or changed out of
8 their work clothing/uniform and/or protective gear after the end time of their scheduled shifts
9 and/or outside of their scheduled shift times.

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

17 64. Based on information and belief, DEFENDANTS also required NON-EXEMPT
18 AGGRIEVED EMPLOYEES to wash their hands before clocking in for their shifts, during rest
19 periods and/or before clocking back in from meal periods, resulting in off-the-clock work and
20 unpaid minimum wages and unpaid overtime wages as well as meal and rest period violations.

21 65. In addition, based on information and belief, DEFENDANTS required NON-EXEMPT
22 AGGRIEVED EMPLOYEES to obtain Covid-related testing outside of their scheduled shift times
23 without compensating them for the time spent completing DEFENDANTS' testing requirements.

24 66. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were
25 required to undergo pre-shift/off-the-clock temperature screenings and/or answer screening
26 questions related to COVID-19, which resulted in at least a few minutes of off-the-clock work.
27 This off-the-clock work was uncompensated and resulted in unpaid wages.

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

16 68. Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT
17 AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy
18 questionnaires, and/or time spent completing the onboarding process including but not limited to
19 reviewing various documents and policies provided by DEFENDANTS. Based on information and
20 belief, this work time was completed off-the-clock and was not compensated.

21 69. Based on further information and belief, DEFENDANTS implemented a time-
22 rounding system that as applied systematically deprived PLAINTIFF and other NON-EXEMPT
23 AGGRIEVED EMPLOYEES of compensable time because the time-rounding system
24 implemented by DEFENDANTS would almost always, if not always, result in understating actual
25 compensable work time. DEFENDANTS' failure to pay for all time worked by virtue of their time-
26 rounding practices resulted in the underpayment of minimum wages owed to PLAINTIFF and
27 NON- EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-
28 EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or

1 more than forty (40) hours in a week. For example, as explained above, DEFENDANTS' wage
2 statements and/or time records for PLAINTIFF for, including but not limited to, the following
3 dates, show exactly 8.00 total regular hours worked: January 23, 2023, January 24, 2023, January
4 26, 2023, and January 27, 2023. Based on information and belief, DEFENDANTS rounded
5 PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' total hours worked to the
6 nearest quarter, half and/or whole hour for most if not all workdays and/or pay periods, resulting
7 in DEFENDANTS' failure to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED
8 EMPLOYEES for all hours worked and the underpayment of minimum wages and overtime wages
9 owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

10 70. DEFENDANTS' failure to pay for all time worked by virtue of their 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 NON-EXEMPT AGGRIEVED EMPLOYEES as well
14 as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked
15 more than eight (8) hours in a day and/or more than forty (40) hours in a week.

16 71. Based on information and belief, DEFENDANTS had actual and/or constructive
17 knowledge that their time rounding policies/practices, auto-deduction policies and practices,
18 failure to provide lawful meal periods and/or other off-the-clock work resulted in the
19 underpayment of minimum wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED
20 EMPLOYEES, in violation of California's minimum wage laws.

21 72. These violations subject DEFENDANTS, to civil penalties under Labor Code sections
22 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code
23 section and Wage Order provision results in a separate civil penalty, for each NON-EXEMPT
24 AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage
25 Order provisions were violated.

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Overtime Violations

73. California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. Ibid. Section 3(A)(1) of IWC Wage Order No. 14, applicable to agricultural occupations, provides in pertinent part as follow:

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

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

C. For employers of more than 25 employees:

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

ii. Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek

1 unless the employee receives one and one-half (1 1/2) times such
2 employee's regular rate of pay for all hours worked over nine (9)
3 hours in any one workday or more than fifty (50) hours in any one
4 workweek.

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

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

19 D. For employers of 25 or fewer employees:

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

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

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

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

9 74. Based on information and belief, DEFENDANTS violated California's overtime laws
10 by, among other things, failing to correctly calculate, or record, the total number of hours worked
11 by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper
12 overtime rates for overtime worked by virtue of same.

13 75. Namely, DEFENDANTS' automatic deduction and time rounding policies and
14 practices for meal periods and shift start times and shift end times, payment according to scheduled
15 hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal
16 periods and/or time spent restricted to DEFENDANTS' premises and/or subject to
17 DEFENDANTS' control during off-the-clock meal periods (described above), and/or other off-
18 the-clock work resulted in the failure to account for all hours worked and thus the denial of
19 minimum wages as well as overtime wages owed to PLAINTIFF and NON-EXEMPT
20 AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty
21 (40) hours in a week.

22 76. Based on information and belief, EMPLOYER employed more than twenty-five (25)
23 employees during the relevant period. Based on information and belief, DEFENDANTS failed and
24 continue to fail to pay a premium wage rate for all hours worked beyond eight (8) hours in a day
25 or beyond forty (40) hours in a week and/or in accordance with California law, including but not
26 limited to, the applicable IWC Wage Orders, including but not limited to, Wage Order 14. Based
27 on information and belief, DEFENDANTS failed and continue to fail to pay twice NON-
28 EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve

(12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

77. Based on information and belief, EMPLOYER sometimes paid NON-EXEMPT AGGRIEVED EMPLOYEES multiple rates of base pay in one workweek but failed to incorporate all multiple rates of base pay into the regular rate of pay for purposes of calculating the owed overtime rate. For example, on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES earned multiple base pay rates during the same workweek, yet EMPLOYER failed to incorporate all/both base pay rates into the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

78. Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

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

80. Violation of Labor Code Section 226.2: Labor Code section 226.2 requires an employer to pay employees compensated on a piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any piece-rate pay. This statute further requires an employer to include on the wage statements for these employees the total hours of compensable rest and recovery period, the total hours for other non-productive time, the rates of compensation for these hours, and the gross wages paid for these hours. In addition, the statute requires that employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the

higher of: (i) an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

81. Based on information and belief, DEFENDANTS failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES who were paid solely on a piece rate and/or commission basis separately for the rest periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based on information and belief, DEFENDANTS further failed to include this information on NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements. As such, DEFENDANTS failed to comply with Labor Code section 226.2.

82. Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick leave to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES. DEFENDANTS either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

83. Based on information and belief, DEFENDANTS further failed to provide notice of the correct sick leave amount balance available to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statements. Based on information and belief, DEFENDANTS failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of employee

1 was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other
2 civil penalties provided by law, any employer or any other person acting on behalf of the employer
3 who violates, or causes to be violated, the provisions of this order, shall be subject to the civil
4 penalty...for each underpaid employee for each pay period during which the employee was
5 underpaid”) used sick leave and the balance of paid sick leave left to the NON-EXEMPT
6 AGGRIEVED EMPLOYEE throughout the relevant time period.

7 84. Based on information and belief, throughout the relevant period, DEFENDANTS
8 failed to provide notice of sick leave amount balance left for PLAINTIFF and other NON-
9 EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick
10 leave. But for this failure, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES
11 would have used their paid sick leave at least prior to their respective separations, for as on several
12 occasions thereafter, he or she would have been entitled to use the banked sick leave and earn
13 appropriate compensation.

14 85. This illegal retention of paid sick leave is unlawful, and PLAINTIFF seeks all forms
15 of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of
16 PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES.

17 86. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
18 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all NON-
19 EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that PLAINTIFF and all
20 NON- EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours
21 accruable under this article.

22 87. Upon information and belief, DEFENDANTS further failed and continue to fail to
23 comply with Labor Code section 246, by failing to provide PLAINTIFF and all NON-EXEMPT
24 AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing
25 containing the amount of paid sick leave available, or paid time off leave an employer provides in
26 lieu of sick leave, at the time it pays wages.

27 88. DEFENDANTS unlawfully retained and continue to retain paid sick leave that should
28 have been paid but was not, as a result of DEFENDANTS’ failure to properly institute a paid sick

1 leave program. On information and belief, PLAINTIFF alleges that all of these practices were
2 experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED
3 EMPLOYEES.

4 89. PLAINTIFF requests all appropriate relief under the PAGA and these statutes,
5 including but not limited to the restitution of earned paid sick leave that could have been used, but
6 was not due to DEFENDANTS' sole failure to institute such a paid sick leave entitlement or paid
7 sick leave bank as required by California law.

8 90. Accordingly, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES
9 are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as
10 permitted by law. PLAINTIFF requests all relief pursuant to the aforementioned code provisions,
11 including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick
12 leave requirements.

13
14 **Failure To Provide Supplemental Paid Sick**

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

22 **Refusal To Make Payment**

23 92. Labor Code §2802 requires employers to indemnify employees for necessary
24 expenditures or losses incurred by employees in direct consequence of discharge of duties.

25 93. Labor Code section 216 declares unlawful an employer's refusal to pay wages due and
26 payable and/or denial of the validity of any claim to wages due.

27 94. DEFENDANTS violated and continue to violate Labor Code section 216 by failing to
28 pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the

proper wage rate and by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. Gould v. Maryland Sound Industries, Inc. (1995) 31 Cal.App.4th 1137, 1154-1155.

95. These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.

Wage Statement Violations

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

97. As DEFENDANTS failed to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9). DEFENDANTS' issued wage statements to PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES that also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours

worked” by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a).

98. Separately, and independent of the above allegations, based on information and belief, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES that failed to list the total hours worked, in violation of including but not limited to, Labor Code section (a)(2).

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

100. Based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid. For example, based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE is being paid. For example, based on information and belief, at times, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES containing payment for hours worked during previous pay periods, yet DEFENDANTS’ wage statements do not include the inclusive dates of the accurate pay period for that retroactive pay, further failing to list the total hours worked for the pay period, including but not limited to, the total hours worked for the pay period the retroactive pay corresponds with. For example, based on information and belief, DEFENDANTS’ wage statements provided to NON-EXEMPT AGGRIEVED EMPLOYEES list a category for “Retro” and/or retroactive pay without including the inclusive dates of the accurate pay period for that retroactive pay, further failing to list the total hours worked for the pay period, including but not

1 limited to, the total hours worked for the pay period the retroactive pay corresponds with, in
2 violation of including but not limited to, Labor Code sections 226(a)(2) and/or 226(a)(6).

3 101. DEFENDANTS' failure to accurately list all hours worked on all wage statements
4 caused confusion to PLAINTIFF and caused and continue to cause confusion to the NON-
5 EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them.
6 PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by DEFENDANTS'
7 failure to provide accurate wage statements.

8 102. In addition, because of the violations detailed above, including but not limited to, not
9 paying regular and overtime wages for all hours worked, not paying all sick leave wages at the
10 proper rates, and failing to provide meal and rest break premiums, DEFENDANTS have violated
11 California Labor Code § 226 by willfully failing to furnish PLAINTIFF and all NON-EXEMPT
12 AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based
13 on information and belief, DEFENDANTS also failed to incorporate all forms of non-discretionary
14 compensation earned during the pay period into the overtime pay rate calculation, and as such,
15 failed to display the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and
16 other NON-EXEMPT AGGRIEVED EMPLOYEES.

17 103. Based on information and belief, wage statements issued by DEFENDANTS failed to
18 list all applicable hourly rates in effect during the pay period and the corresponding number of
19 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
20 For example, as described herein, based on information and belief, DEFENDANTS failed to
21 incorporate all forms of non-discretionary compensation earned during the pay period, including
22 but not limited to, non-discretionary bonus/incentive pay and/or shift differential pay and/or
23 multiple base rates of pay and/or other non-discretionary compensation into the overtime pay rate
24 calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime
25 worked by NON-EXEMPT AGGRIEVED EMPLOYEES.

26 104. Based on information and belief, EMPLOYER issued wage statements that failed to
27 list the number of piece rate units completed/earned during the pay period and the applicable rate
28 of pay for each piece rate unit. Moreover, based on information and belief, DEFENDANTS issued

1 wage statements to PLAINTIFF, NON-
2 EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that
3 further violate Labor Code section 226(a), by among other things, failing to list the correct name
4 and/or address of the legal entity that is the employer. As a result, the wage statements provided
5 to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED
6 EMPLOYEES were not accurate and did not include all of the statutorily required information.
7 These violations subject DEFENDANTS to civil penalties under Labor Code section 226. Each
8 violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE
9 and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute
10 provisions were violated.

11 **Unlawful Deductions**

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

21 106. Each violation results in a separate civil penalty, for each NON-EXEMPT
22 AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period
23 during which the statute provisions were violated. See Lab. Code §225.5 (establishing that “[i]n
24 addition to, and entirely independent and apart from, any other penalty provided in this article,
25 every person who unlawfully withholds wages due any employee in violation of Section 212, 216,
26 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”)

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

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

110. Based on information and belief, DEFENDANTS have a policy and practice of failing to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of

1 California law, including but not limited to, the applicable IWC Wage Order, Section 5.
2 DEFENDANTS' failure to pay all reporting time wages to NON-EXEMPT AGGRIEVED
3 EMPLOYEES violated and continue to violate the applicable Wage Order, section 5(A)-(B) and
4 the California Labor Code, including but not limited to section 1198.

5 **California Day of Rest Violations**

6 111. Under California law, every employee in California is "entitled" to "one day's rest
7 [from labor] in seven"; and, no employer may "cause" their employees "to work more than six
8 days in seven." See Labor Code Sections 551 and 552. Labor Code section 553 provides that a
9 violation of the foregoing sections is a misdemeanor. Based on information and belief,
10 DEFENDANTS have and continue to have a uniform policy and practice of requiring NON-
11 EXEMPT AGGRIEVED EMPLOYEES to work at least seven days consecutively in a workweek,
12 in violation of including but not limited to, Labor Code Section 551. Based on information and
13 belief, PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES were suffered,
14 permitted, or required to work at least seven (7) days consecutively in a workweek, in violation of
15 California law, including but not limited to Labor Code Section 551.

16 **Seating Violations**

17 112. Labor Code §2802 requires employers to indemnify employees for necessary
18 expenditures or losses incurred by employees in direct consequence of discharge of duties.

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

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

23 A. All working employees shall be provided with suitable seats when the nature of
24 the work reasonably permits the use of seats.

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

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

7 116. Based on information and belief, DEFENDANTS failed to provide NON-EXEMPT
8 AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged
9 in duties which required them to stand, no seating was placed in reasonable proximity to their
10 workstations.

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

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

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120. Therefore, DEFENDANTS' violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses, seating, suitable resting, reporting time pay, and other violations described herein result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

121. Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages. As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Failure to Pay Vested Vacation/Paid Time Off

PAGA COMPLAINT - 36

1 respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or
2 paid time off upon termination. Based on information and belief, DEFENDANTS had and continue
3 to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED
4 EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time
5 off during their employment and failing to pay all vested, accrued paid time off (including but not
6 limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary
7 compensation, including but not limited to, shift differentials) to NON-EXEMPT AGGRIEVED
8 EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment,
9 in violation of California law, including but not limited to, Labor Code section 227.3.

10 **Final Pay Violations**

11 124. Labor Code section 201 requires employers to pay all wages earned and unpaid at the
12 time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in
13 relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the
14 time of discharge are due and payable immediately.” California Labor Code section 202(a)
15 provides, in relevant part, that “[i]f an employee not having a written contract for a definite period
16 quits his or her employment, his or her wages shall become due and payable not later than 72 hours
17 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit,
18 in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to
19 Labor Code section 203, an employer that willfully fails to pay wages due an employee who is
20 terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's
21 daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting
22 time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS*
23 *Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v.*
24 *Superior Court*, 134 Cal. App. 4th 365 (2005).

25 125. Based on information and belief, DEFENDANTS failed to timely pay NON-
26 EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages
27 that were due and owing upon termination or resignation. Based on information and belief,
28 DEFENDANTS untimely provide final wages to NON-EXEMPT AGGRIEVED EMPLOYEES

1 and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor
2 Code sections 201-202.

3 126. Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and
4 EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were
5 not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT
6 AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as
7 they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
8 premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly
9 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final
10 rate including non-discretionary compensation, including but not limited to, shift differentials).

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

18 128. Based on further information and belief, DEFENDANTS failed to timely provide all
19 owed wages immediately upon discharge of employment. Based in information and belief, at
20 times, NON- EXEMPT AGGRIEVED EMPLOYEES experienced breaks in employment caused
21 by DEFENDANTS whereby NON-EXEMPT AGGRIEVED EMPLOYEES would not be called
22 in for work for longer than a single pay period due to including but not limited to DEFENDANTS'
23 lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet,

24 129. DEFENDANTS failed to timely pay all owed wages at the end of such periods of
25 employment, in violation of including but not limited to Labor Code section 201-202.

26 130. These violations subject DEFENDANTS to civil penalties under Labor Code sections
27 203, 210, and/or 256. Each violation results in a separate civil penalty, for each EXEMPT
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1 AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay
2 period during which the statute provisions were violated.

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

7 132. Based on information and belief, DEFENDANTS have a policy and practice of failing
8 to provide NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED
9 EMPLOYEES who are terminated with their final paychecks at the place of discharge and/or of
10 failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED
11 EMPLOYEES with their final paychecks at the office or agency of DEFENDANTS in the county
12 where the work was performed, in violation of Labor Code Section 208

13 **Failure to Reimburse For Required Business Expenses**

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

20 134. Among other things, under California law, when tools or equipment are required by
21 the employer or are necessary to the performance of a job, such tools and equipment shall be
22 provided and maintained by employer, except that an employee whose wages are at least two (2)
23 times the minimum wage provided herein may be required to provide and maintain hand tools and
24 equipment customarily required by the trade or craft. See applicable IWC Wage Order, § 9 (b).

25 135. Among other things, under California law, when employees must use their personal
26 cellphones for work-related purposes, the employer must reimburse them for a reasonable
27 percentage of their cell phone bills. See Cochran v. Schwan’s Home Services, Inc. (2014) 228
28 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was

1 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
2 Id. 1144-1145. California law also requires employers to reimburse employees for automobile
3 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
4 and tear on the vehicle. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further,
5 “any contract or agreement, express or implied, made by any employee to waive the benefits of
6 this article or any part thereof, is null and void, and this article shall not deprive any employee or
7 his personal representative of any right or remedy to which he is entitled to under the laws of this
8 State.” See Cal. Lab. Code § 2804.

9 136. Based on information and belief, PLAINTIFF and NON-EXEMPT AGGRIEVED
10 EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide
11 and maintain work tools that are supposed to be the responsibility of the employer.

12 137. Based on information and belief, DEFENDANTS shifted the costs of doing business
13 onto NON-
14 EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by
15 requiring them to pay for their business expenses including but not limited to, uniforms/work
16 clothing/work shoes, personal protective/safety gear and/or the use of NON-EXEMPT
17 AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ personal mobile
18 phones, cost of internet and/or data usage for work related purposes, including but not limited to,
19 to receive and respond to work related messages and/or phone calls. For example, based on
20 information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT
21 AGGRIEVED EMPLOYEES were required to receive and respond to work- related calls and/or
22 messages on their personal cell phones/mobile devices, including but not limited to, regarding
23 work scheduling and/or other work tasks without being provided any and/or full reimbursement
24 from DEFENDANTS for these business expenses.

25 138. Based on information, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or
26 EXEMPT AGGRIEVED EMPLOYEES were required to supply their own uniforms, work
27 clothing/work shoes and/or safety/protective gear, such as, but not limited to, work shoes,
28 protective eyewear, gloves and/or rain gear and/or work equipment including but not limited to

1 hand tools (scissors, knives, blades) baskets/containers, ear plugs and/or face masks which
2 DEFENDANTS required, yet NON-
3 EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were
4 not reimbursed by DEFENDANTS for the business expenses they incurred in connection
5 therewith. For example, DEFENDANTS required PLAINTIFF to purchase gloves, rain boots,
6 and/or other uniforms and/or protective/safety gear to wear for work without providing any and/or
7 full reimbursement for these business expenses.

8 139. Based on information and belief, at times, DEFENDANTS failed to reimburse NON-
9 EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for
10 expenses associated with having to purchase and/or maintain their own hand tools and/or
11 equipment required to perform their assigned job duties. For example, PLAINTIFF was required
12 to purchase her own cutting scissors and/or other hand tools and/or equipment necessary to carry
13 out PLAINTIFF's assigned job duties but was not provided with any and/or full reimbursement
14 for these business expenses.

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

23 141. As explained above, based on information and belief, NON-EXEMPT AGGRIEVED
24 EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of
25 using their personal phone for work-related purposes and/or the cost of purchasing and/or
26 maintaining work uniforms/work clothing/work shoes, personal protective/safety gear. '

27 142. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and
28 EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses

1 that are supposed to be the responsibility of DEFENDANTS. As a pattern and practice,
2 DEFENDANTS regularly failed to reimburse and indemnify NON- EXEMPT AGGRIEVED
3 EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to
4 California Labor Code section 2802, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES
5 and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable
6 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
7 assigned by DEFENDANTS. As described herein, DEFENDANTS regularly failed to reimburse
8 and indemnify PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT
9 AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job
10 duties. DEFENDANTS' failure to provide PLAINTIFF, NON-
11 EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full
12 reimbursement for all reasonable expenses associated with carrying out their duties required that
13 PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED
14 EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code
15 section 2802.

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

17 143. Labor Code section 432.5 provides that "no employer...shall require any employee
18 or applicant for employment to agree, in writing, to any term or condition which is known by such
19 employer...to be prohibited by law." Based on information and belief, DEFENDANTS required
20 PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED

21 144. EMPLOYEES to agree in writing to unlawful conditions of employment including
22 but not limited to unlawful non-solicitation/non-compete agreements, unlawful confidentiality
23 and/or nondisclosure agreements, unlawful releases and/or waivers, including but not limited to,
24 unlawful meal period waivers, unlawful forum selection clauses and/or choice of law
25 provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining
26 and/or continuing employment in violation of Labor Code section 432.5.

27 145. Violation of Labor Code Section 432.6: Based on information and belief,
28 DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to sign meal period

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

4 A. “[A] person shall not, as a condition of employment, continued employment, or
5 the receipt of any employment-related benefit, require any applicant for
6 employment or any employee to waive any right...”

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

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

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

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

(FC-A - 15 U.S.C. section 1681, et seq.) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

149. Based on information and belief, DEFENDANTS ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

150. Based on information and belief, DEFENDANTS also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

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

1 152. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT
2 AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not
3 in conformance with the applicable laws, DEFENDANTS violated Labor Code section 432.5.

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

10 154. Based on further information and belief, DEFENDANTS knew that requiring NON-
11 EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to
12 unlawful criminal and/or financial background checks as a condition of obtaining and/or holding
13 employment was unlawful.

14 155. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT
15 AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of
16 employment, DEFENDANTS violated Labor Code section 432.5.

17 156. Unlawful Inquires into Criminal History. Labor Code section 432.7 prohibits an
18 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even
19 then, certain limitations apply. Based on information and belief, DEFENDANTS asked NON-
20 EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about
21 arrests not resulting in convictions on their employment application, in violation of California law.
22 Upon information and belief, DEFENDANTS, in violation of California law, including but not
23 limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked
24 NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about
25 convictions prior to extending an offer of employment and/or otherwise impermissibly inquired
26 into criminal history on their employment application in violation of California law. By asking
27 about arrests not resulting in convictions, DEFENDANTS violated Labor Code section 432.7. By
28 asking about convictions at the application phase or prior to extending an employment offer,

1 DEFENDANTS violated California's Fair Chance Act, and thereby violated Labor Code section
2 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT
3 AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a
4 condition of employment.

5 157. Unlawful PAGA Waiver. Additionally, DEFENDANTS violated Labor Code section
6 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED
7 EMPLOYEES to agree in writing to other unlawful agreements, including but not limited to, an
8 unlawful waiver of PAGA and or representative actions as a condition of employment.

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

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

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

1 161. As such, PLAINTIFF, NON-
2 EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue
3 to be subject to various unlawful provisions as a condition of employment.

4 **FIRST CAUSE OF ACTION**

5 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**
6 **(California Labor Code §2698 *et seq.*)**

7 162. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
8 incorporate said paragraphs herein by reference.

9 163. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by Defendant
10 during the applicable statutory period and suffered one or more of the Labor Code violations set
11 forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and
12 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
13 attorneys’ fees and costs.

14 164. Plaintiff seeks to recover the PAGA civil penalties through a representative action
15 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
16 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

17 165. Plaintiff seeks civil penalties pursuant to PAGA for violations of the Labor Code
18 provisions mentioned above and herein.

19 166. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
20 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
21 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
22 employee for each subsequent violation of Labor Code §226(a).

23 167. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
24 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
25 for each underpaid employee for each pay period for which the employee was underpaid, and one
26 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
27 for which the employee was underpaid.

168. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

169. Plaintiff and the other current and former employees of Defendant are aggrieved employees. They were or are employed by Defendant, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of herself and all other current and former aggrieved employees.

170. At the time of each violation, Defendant employed one or more employees.

171. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

172. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency (“LWDA”) and served by certified mail upon Defendant, Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions that Defendant has violated. The LWDA did not respond to Plaintiff’s Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue her PAGA claims in this action on behalf of aggrieved employees and the State of California.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for judgement against Defendant as follows:

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;

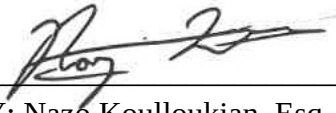
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;

4. Pre-judgement and post-judgement interest as provided by law; and

5. Such other and further relief that the Court may deem just and proper.

DATED: January 25, 2024

KOUL LAW FIRM

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', is written over a horizontal line.

BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff OLGA HUIZAR, and all
aggrieved employees

EXHIBIT 1



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

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fax: (310) 510-6429

October 12, 2023

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Kennt E Laird
Agent for Service of Process for:
Bayview Vineyards Corporation
5135 Solano Ave
Napa, CA 94558

Bayview Vineyards Corporation
Attn: Human Resources/Legal Department
5135 Solano Ave
Napa, CA 94558

Rebecca A Laird
Agent for Service of Process for:
Laird Family Estate LLC
5055 Solano Ave
Napa, CA 94558

Laird Family Estate LLC
Attn: Human Resources / Legal Department
5055 Solano Ave
Napa, CA 94558

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Bayview Vineyards Corporation and Laird Family Estate LLC
Date: October 12, 2023
Subject: *Olga Huizar v. Bayview Vineyards Corporation, et. al.*

Introduction

This office represents PLAINTIFF, Olga Huizar (hereinafter "PLAINTIFF") in connection with PLAINTIFF's claims under the California Labor Code. PLAINTIFF was, at all relevant times

herein mentioned, an employee of the following entities and individual managing agents of said entities: Bayview Vineyards Corporation and Laird Family Estate LLC (hereinafter, these entities and their managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, PLAINTIFF, on behalf of PLAINTIFF, and on behalf of all current and former non-exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of PLAINTIFF’s claims against DEFENDANTS. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and DEFENDANTS via certified mail to their Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

This NOTICE also serves to demonstrate PLAINTIFF’s reasonable attempt at settlement with DEFENDANTS. If DEFENDANTS are interested in settling this matter before a lawsuit is filed, DEFENDANTS may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by PLAINTIFF to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—PLAINTIFF reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, DEFENDANTS are on notice that PLAINTIFF continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that DEFENDANTS intend to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the DEFENDANTS shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, PLAINTIFF will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which PLAINTIFF will base PLAINTIFF’s claims, PLAINTIFF requests that the LWDA regard this NOTICE as written notice of PLAINTIFF’s intent to seek civil penalties against DEFENDANTS. Under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, a PAGA representative has authority to

seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under *Johnson v. Maxim Healthcare Servs., Inc.*, (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee’s individual claim is time-barred.

PLAINTIFF, on behalf of PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that DEFENDANTS have violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 208, 216, 221-223, 226, 226.2, 226.7, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

PLAINTIFF is informed and believes and thereon alleges that at all relevant times DEFENDANTS and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

PLAINTIFF believes and hereon asserts that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. For example, wage statements issued to PLAINTIFF by DEFENDANTS identify Bayview Vineyards, Inc. as the name of the legal entity that is PLAINTIFF’s employer. However, wage statements issued by DEFENDANTS to PLAINTIFF also identify “Andretti” and/or “Big Ranch” as farms that PLAINTIFF was assigned to work at. Based on information and belief, during the relevant period, DEFENDANTS assigned PLAINTIFF to work at various vineyards and/or farms, including but not limited to, vineyards and/or farms operating under the name(s) “Andretti” and/or “Big Ranch”, which based on information and belief are owned operated and/or managed by Laird Family Estate LLC. By reason of their status as joint employers of PLAINTIFF and NON-EXEMPT

AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. DEFENDANTS, at all relevant times, were an employer or person acting on behalf of employer(s) who violated PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

PLAINTIFF intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. PLAINTIFF will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. PLAINTIFF asks and demands that DEFENDANTS put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, PLAINTIFF also offers to DEFENDANTS to place those individuals on notice if DEFENDANTS voluntarily provides their contact information.

General Information

DEFENDANTS own, operate, manage and/or staff its employees to work at the fields, vineyards, and/or facilities and/or other location(s) in California, including but not limited to, the fields, vineyards, and/or facilities in Napa, California. DEFENDANTS, through its various locations serve the agricultural industry.¹ Although DEFENDANTS may operate a successful company or have a noble mission, DEFENDANTS do not comply with California's labor laws.

PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title(s) of grape laborer and/or a similar title(s) and/or position(s) through on or around March 27, 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Napa, California location(s). PLAINTIFF regularly worked at least eight (8) hours per day, at least five (5) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for

¹ See <http://www.lairdfamilyestate.com/>. Last visited on October 12, 2023.

time counted by DEFENDANTS as hours worked. Based on information and belief, PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES were also compensated with piece-rate compensation (e.g., pay per unit created, pruned and/or harvested). Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times compensated on a strictly piece-rate basis (e.g., pay per unit created, pruned and/or harvested).

Among other things, DEFENDANTS (1) failed and continue to fail to keep accurate and complete time records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continue to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continue to fail to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continue to refuse to make and/or falsely denied the amount of payments due to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continue to fail to place PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continue to fail to provide legally compliant wage statements to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continue to fail to timely pay wages to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continue to fail to reimburse PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of DEFENDANTS; (12) conducted and continue to conduct illegal criminal and/or financial background checks as a condition of PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continue to require PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continue to inquire into PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) failed and continue to fail to provide suitable seating; and (15) required and continue to require PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which allowed meal periods were provided each day.

Based on information and belief, DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of DEFENDANTS’ time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by virtue of DEFENDANTS’ failure to relieve PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS’ control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, DEFENDANTS further failed, and continue to fail, to record the true start and end times of PLAINTIFF’s and NON-EXEMPT AGGRIEVED EMPLOYEES’ meal periods.

Based on further information and belief, DEFENDANTS further failed and continue to fail, to record the true start and end times of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES’ work shifts.

Additionally, DEFENDANTS failed, and continue to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES.

DEFENDANTS’ failure to keep “accurate and complete” payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”).

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

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

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

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, DEFENDANTS failed to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and belief, DEFENDANTS failed and continue to fail to timely produce complete payroll and personnel records when requested by NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code

section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, PLAINTIFF did not sign a valid meal period waiver throughout PLAINTIFF's employment by DEFENDANTS.

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

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

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were sometimes forced to take late meal periods in order to complete assigned job duties. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times interrupted during purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties.

For example, PLAINTIFF was restricted to DEFENDANTS' premises during unpaid meal periods and as such was not relieved of all duties and DEFENDANTS' control during unpaid, purportedly off-duty meal periods, resulting in denied meal periods as well as DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of minimum wages and overtime wages owed to PLAINTIFF.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and expectations.

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during unpaid meal periods.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their policies and practices resulted in the denial of uninterrupted meal periods which were free of DEFENDANTS' control owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per DEFENDANTS' uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

Based on information and belief, despite DEFENDANTS' failure to provide lawful meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end times of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to DEFENDANTS' premises), despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

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

Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, DEFENDANTS did not have a compliant written meal break policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

PLAINTIFF is further informed and believes and thereon alleges that DEFENDANTS had actual and/or constructive knowledge that their time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ DEFENDANTS' failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

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

DEFENDANTS did not properly authorize and provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice.

For example, PLAINTIFF was not provided with compliant rest periods during PLAINTIFF's employment due to including but not limited to, being restricted to DEFENDANTS' premises/PLAINTIFF's assigned field area(s) during any rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

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

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, DEFENDANTS failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. DEFENDANTS either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

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

Based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to spend multiple hours at a time outdoors in significantly high temperature heat conditions. DEFENDANTS failed to provide proper heat illness prevention

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

training and/or heat illness policies/practices/programs as required by California's Heat Illness Prevention statute, Title 8 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by California's Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS maintained a policy and practice of not permitting necessary time for cooldown recovery breaks, and as a result, NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain outdoors with little to no access to shade for extended periods of time. In addition, DEFENDANTS, failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with an additional hour of pay at PLAINTIFF's regular rate of pay for each missed cooldown recovery period.

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

DEFENDANTS' locations/facilities are generally similar in layout and design, and there was, and continue to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. DEFENDANTS could have provided PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within DEFENDANTS' facilities/locations with reasonable or no modification, but instead denied and continue to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises which are not designated or reserved for rest, such as their personal vehicles.

DEFENDANTS did not provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

DEFENDANTS' failure to provide suitable resting facilities to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

Minimum Wage Violations: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit." Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, "Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period..." The applicable Wage Order defines "hours worked" as "the time during which an

employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

DEFENDANTS failed to compensate PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of DEFENDANTS’ automatic deduction and time rounding policies for shift start and shift end times and meal period start and end times, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, DEFENDANTS implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to DEFENDANTS’ control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS’ policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

For example, DEFENDANTS required PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES to forego recording all worktime by, for example, requiring PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES to sign off on a daily written time sheet that merely acknowledged their attendance for their scheduled work hours and/or listed their scheduled hours for the day as opposed to actual hours worked.

For example, based on information and belief, DEFENDANTS instructed PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES to notate their scheduled hours worked each day on a written time sheet during their purported meal period.

Notably, DEFENDANTS’ wage statements and/or time records for PLAINTIFF for, including but not limited to, the following dates, show exactly 8.00 total regular hours worked: January 23, 2023, January 24, 2023, January 26, 2023, and January 27, 2023.

Based on information and belief, DEFENDANTS recorded and/or required PLAINTIFF to record only PLAINTIFF’s scheduled hours worked rather than actual hours worked and/or rounded

PLAINTIFF's total hours worked to the nearest quarter, half and/or whole hour for most if not all workdays, resulting in DEFENDANTS' failure to pay PLAINTIFF for all hours worked and the underpayment of minimum wages and overtime wages owed to PLAINTIFF.

Based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently required to perform pre-shift and/or post-shift work that was neither recorded nor compensated.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to be at their field areas/respective workstations at their scheduled shift start time or face discipline. As such, NON-EXEMPT AGGRIEVED EMPLOYEES typically arrived at work at least five (5) to seven (7) minutes prior to their scheduled shift start times each day so that they could perform any required pre-shift work, including but not limited to, setting up shade tents as directed by DEFENDANTS, bestowing their personal items in the employee storage area, retrieving/compiling their work tools/equipment (e.g., knives, blades, scissors, baskets/containers, tractors) making any necessary adjustments to their tools/equipment and/or perform any required maintenance tasks, don work clothing/their uniforms and protective equipment (aprons, gloves, protective chaps, rain gear, hairnets and/or face masks), and/or complete other work tasks so as to be ready to be at their respective work stations at their scheduled shift start times as mandated by DEFENDANTS. This pre-shift off-the-clock work was neither recorded nor compensated resulting in the substantial underpayment of wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, DEFENDANTS required PLAINTIFF to assist in setting up shade tents prior to clocking in for the start of PLAINTIFF's shifts, resulting in at least approximately five (5) to seven (7) minutes of pre-shift off-the-clock work on many if not all workdays and the underpayment of minimum wages and overtime wages owed to PLAINTIFF. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to perform pre-shift off-the-clock work including without limitation, assisting in setting up shade tents and/or completing other work tasks off-the-clock as directed by DEFENDANTS, resulting in at least approximately five (5) to seven (7) minutes of pre-shift off-the-clock work for each NON-EXEMPT AGGRIEVED EMPLOYEE during most if not all days worked during their respective employments and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to perform post-shift off-the-clock work that was neither recorded nor compensated.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES put away their work tools/equipment, take down shade tents and/or changed out of their work clothing/uniform and/or protective gear after the end time of their scheduled shifts and/or outside of their scheduled shift times.

Based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform additional off-the-clock work for which they were not

compensated. For example, based on information and belief, DEFENDANTS did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment, safety equipment and/or uniforms/work clothing (e.g., aprons, gloves, hairnets and/or face masks) during meal periods, rest periods, before the start of a scheduled shift, and/or after completing a scheduled shift.

Based on information and belief, DEFENDANTS also required NON-EXEMPT AGGRIEVED EMPLOYEES to wash their hands before clocking in for their shifts, during rest periods and/or before clocking back in from meal periods, resulting in off-the-clock work and unpaid minimum wages and unpaid overtime wages as well as meal and rest period violations.

In addition, based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to obtain Covid-related testing outside of their scheduled shift times without compensating them for the time spent completing DEFENDANTS' testing requirements.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to undergo pre-shift/off-the-clock temperature screenings and/or answer screening questions related to COVID-19, which resulted in at least a few minutes of off-the-clock work. This off-the-clock work was uncompensated and resulted in unpaid wages.

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

Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by DEFENDANTS. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable

work time. DEFENDANTS' failure to pay for all time worked by virtue of their time-rounding practices resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week. For example, as explained above, DEFENDANTS' wage statements and/or time records for PLAINTIFF for, including but not limited to, the following dates, show exactly 8.00 total regular hours worked: January 23, 2023, January 24, 2023, January 26, 2023, and January 27, 2023. Based on information and belief, DEFENDANTS rounded PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' total hours worked to the nearest quarter, half and/or whole hour for most if not all workdays and/or pay periods, resulting in DEFENDANTS' failure to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of minimum wages and overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

DEFENDANTS' failure to pay for all time worked by virtue of their time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject DEFENDANTS, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

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

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

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

(2) For employers of more than 25 employees:

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

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

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

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

(3) For employers of 25 or fewer employees:

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

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

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

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

Based on information and belief, DEFENDANTS violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, DEFENDANTS' automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to DEFENDANTS' premises and/or subject to DEFENDANTS' control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

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

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

Based on information and belief, DEFENDANTS failed and continue to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, EMPLOYER sometimes paid NON-EXEMPT AGGRIEVED EMPLOYEES multiple rates of base pay in one workweek but failed to incorporate all multiple rates of base pay into the regular rate of pay for purposes of calculating the owed overtime rate. For example, on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES earned multiple base pay rates during the same workweek, yet EMPLOYER failed to incorporate all/both base pay rates into the regular rate of pay for purposes of calculating the owed overtime rate, resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the

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

Based on information and belief, DEFENDANTS failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES who were paid solely on a piece rate and/or commission basis separately for the rest periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based on information and belief, DEFENDANTS further failed to include this information on NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements. As such, DEFENDANTS failed to comply with Labor Code section 226.2.

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick leave to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES. DEFENDANTS either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, DEFENDANTS further failed to provide notice of the correct sick leave amount balance available to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statements.

Based on information and belief, DEFENDANTS failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of

employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, DEFENDANTS failed to provide notice of sick leave amount balance left for PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and PLAINTIFF seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, DEFENDANTS further failed and continue to fail to comply with Labor Code section 246, by failing to provide PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

DEFENDANTS unlawfully retained and continue to retain paid sick leave that should have been paid but was not, as a result of DEFENDANTS' failure to properly institute a paid sick leave program.

On information and belief, PLAINTIFF alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

PLAINTIFF requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to DEFENDANTS' sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. PLAINTIFF requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care

for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

DEFENDANTS violated and continue to violate Labor Code section 216 by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

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

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

DEFENDANTS' issued wage statements to PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES that also failed to indicate the earned gross and net wages earned during the pay

⁷ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty 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).

period, the correct applicable rates of pay for all hours worked, and the “total hours worked” by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a).

Separately, and independent of the above allegations, based on information and belief, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES that failed to list the total hours worked, in violation of including but not limited to, Labor Code section (a)(2).

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

Based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid.

For example, based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE is being paid. For example, based on information and belief, at times, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES containing payment for hours worked during previous pay periods, yet DEFENDANTS’ wage statements do not include the inclusive dates of the accurate pay period for that retroactive pay, further failing to list the total hours worked for the pay period, including but not limited to, the total hours worked for the pay period the retroactive pay corresponds with. For example, based on information and belief, DEFENDANTS’ wage statements provided to NON-EXEMPT AGGRIEVED EMPLOYEES list a category for “Retro” and/or retroactive pay without including the inclusive dates of the accurate pay period for that retroactive pay, further failing to list the total hours worked for the pay period, including but not limited to, the total hours worked for the pay period the retroactive pay corresponds with, in violation of including but not limited to, Labor Code sections 226(a)(2) and/or 226(a)(6).

DEFENDANTS’ failure to accurately list all hours worked on all wage statements caused confusion to PLAINTIFF and caused and continue to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by DEFENDANTS’ failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, DEFENDANTS also failed to incorporate all forms of non-discretionary

compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, wage statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9). For example, as described herein, based on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary compensation earned during the pay period, including but not limited to, non-discretionary bonus/incentive pay and/or shift differential pay and/or multiple base rates of pay and/or other non-discretionary compensation into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by NON-EXEMPT AGGRIEVED EMPLOYEES.

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

Moreover, based on information and belief, DEFENDANTS issued wage statements to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject DEFENDANTS to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

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

Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the

⁸ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

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

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. DEFENDANTS violated this section by, including but not limited to, failing to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject DEFENDANTS to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute’s provisions were violated.

Reporting Time Pay Violations:

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

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

NON-EXEMPT AGGRIEVED EMPLOYEES were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order.

For example, based on information and belief, at times, PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES reported to work for a scheduled shift but were sent home and/or were not put to work and were not paid all owed reporting time pay wages in accordance with California law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS’ failure to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 5(A)-(B) and the California Labor Code, including but not limited to section 1198.

Violation of California Day of Rest Law

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

Based on information and belief, DEFENDANTS have and continue to have a uniform policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to work at least seven days consecutively in a workweek, in violation of including but not limited to, Labor Code Section 551. Based on information and belief, PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES were suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in violation of California law, including but not limited to Labor Code Section 551.

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

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

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

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

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

Based on information and belief, DEFENDANTS failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

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

section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, DEFENDANTS' violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses, seating, suitable resting, reporting time pay, and other violations described herein result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, DEFENDANTS paid PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off:

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, DEFENDANTS had and continue to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials) to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, DEFENDANTS failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, DEFENDANTS untimely provide final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES’ final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials).

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

Based on further information and belief, DEFENDANTS failed to timely provide all owed wages immediately upon discharge of employment. Based in information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES experienced breaks in employment caused by DEFENDANTS whereby NON-EXEMPT AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to DEFENDANTS’ lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet,

DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

These violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

Violation of Labor Code Section 208:

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

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

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

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

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

California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

¹⁰ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

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

Based on information and belief, PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses including but not limited to, uniforms/work clothing/work shoes, personal protective/safety gear and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ personal mobile phones, cost of internet and/or data usage for work related purposes, including but not limited to, to receive and respond to work related messages and/or phone calls.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to receive and respond to work-related calls and/or messages on their personal cell phones/mobile devices, including but not limited to, regarding work scheduling and/or other work tasks without being provided any and/or full reimbursement from DEFENDANTS for these business expenses.

Based on information, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to supply their own uniforms, work clothing/work shoes and/or safety/protective gear, such as, but not limited to, work shoes, protective eyewear, gloves and/or rain gear and/or work equipment including but not limited to hand tools (scissors, knives, blades) baskets/containers, ear plugs and/or face masks which DEFENDANTS required, yet NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed by DEFENDANTS for the business expenses they incurred in connection therewith.

For example, DEFENDANTS required PLAINTIFF to purchase gloves, rain boots, and/or other uniforms and/or protective/safety gear to wear for work without providing any and/or full reimbursement for these business expenses.

Based on information and belief, at times, DEFENDANTS failed to reimburse NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES for expenses associated with having to purchase and/or maintain their own hand tools and/or equipment required to perform their assigned job duties. For example, PLAINTIFF was required to purchase her own cutting scissors and/or other hand tools and/or equipment necessary to carry out PLAINTIFF’s assigned job duties but was not provided with any and/or full reimbursement for these business expenses.

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business use of their personal

vehicles, including but not limited to, mileage, wear and tear, and/or cost of fuel when they were required to drive around and/or between job sites, and/or use their personal vehicles in carrying out the duties assigned by DEFENDANTS. As such, DEFENDANTS failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

As explained above, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear. '

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

As a pattern and practice, DEFENDANTS regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

As described herein, DEFENDANTS regularly failed to reimburse and indemnify PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. DEFENDANTS' failure to provide PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, DEFENDANTS required PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

Violation of Labor Code Section 432.6:

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to sign meal period waivers that were universally signed as a condition of employment, including but not limited to, during the onboarding process. Further, these invalid waivers are otherwise unlawful under Labor Code section 432.6.

Labor Code Section 432.6(a) provides:

“[A] person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right...”

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

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

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

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

Based on information and belief, DEFENDANTS ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to

the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, DEFENDANTS also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

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

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code section 432.5.

Based on information and belief, DEFENDANTS also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to DEFENDANTS to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, DEFENDANTS knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, DEFENDANTS violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, DEFENDANTS asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on their employment application, in violation of California law.

Upon information and belief, DEFENDANTS, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on their employment application in violation of California law.

By asking about arrests not resulting in convictions, DEFENDANTS violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Unlawful PAGA Waiver

Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

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

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

Upon information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

As such, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

DEFENDANTS have violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, PLAINTIFF will seek these penalties in a civil action, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of DEFENDANTS within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

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Thank you for your attention to this matter.

Best Regards,



Kiara Bramasco, Esq.
CROSNER LEGAL, PC