

1 JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
2 BRANDON BROUILLETTE, ESQ. (SBN 273156)
bbrouillette@crosnerlegal.com
3 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
4 **CROSNER LEGAL, PC**
5 9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
6 Tel: (866) 276-7637
Fax: (310) 510-6429

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8 Attorneys for Plaintiff JENTILA CALLAS
on behalf of the State of California
9 and all Aggrieved Employees

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF RIVERSIDE**

12 JENTILA CALLAS, on behalf of the State of
California and all Aggrieved Employees,

13 Plaintiff,

14
15 v.

16 CARTER HOSPITALITY GROUP, LLC, a
17 Florida Limited Liability Company;
CARTER ESTATE WINERY AND
18 RESORT, LLC, a California Limited
Liability Company; SOUTH COAST
19 WINERY, INC., a California Corporation;
and DOES 1-100, inclusive,

20 Defendants.
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Case No.: **CVRI 2400874**

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

1 Plaintiff, JENTILA CALLAS, (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants CARTER
3 HOSPITALITY GROUP, LLC, a Florida Limited Liability Company; CARTER ESTATE
4 WINERY AND RESORT, LLC, a California Limited Liability Company; SOUTH COAST
5 WINERY, INC., a California Corporation; and DOES 1-100, inclusive, (collectively referred to
6 herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

7 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

23 **THE PARTIES**

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

26 3. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
27 DEFENDANTS as a non-exempt employee with a job title of head cook and/or a similar title(s)
28 and/or job position(s) from in or around 2022, through on or around October 15, 2023. PLAINTIFF

1 worked for DEFENDANTS at DEFENDANTS' Temecula, California location(s). PLAINTIFF
2 regularly worked at least nine (9) to ten (10) hours per shift, at times working shifts lasting at least
3 fourteen (14) hours per day.

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

7 5. Defendant CARTER ESTATE WINERY AND RESORT, LLC is a California
8 Limited Liability Company that, at all relevant times, was authorized to do business within the State
9 of California and is doing business in the State of California.

10 6. Defendant SOUTH COAST WINERY, INC. is a California Corporation that, at all
11 relevant times, was authorized to do business within the State of California and is doing business in
12 the State of California.

13 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
14 hotels, spas, resorts, wineries, vineyards, restaurants and/or other facilities and/or other location(s)
15 in California, including but not limited to, the hotels, spas, resorts, wineries, vineyards, restaurants
16 and/or other facilities in Temecula, California. DEFENDANTS operate locations in California
17 under including but not limited to the following names: South Coast Winery Resort & Spa and
18 Carter Estate Winery and Resort. DEFENDANTS operate including but not limited to wineries and
19 resorts and also harvest and process grapes and create their own wine. DEFENDANTS' Aggrieved
20 Employees worked in various positions and/or departments to fulfill various aspects of
21 DEFENDANTS' business. DEFENDANTS, through its various locations, serve the wine and/or
22 hospitality industry.

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

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

JOINT LIABILITY

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

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

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

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

27 14. For example, based on information and belief, DEFENDANTS, and each of them,
28 maintain the same principal business address/ mailing address and/or agent for service of process as

1 provided to the California Secretary of State and/or the Secretary of State of the State of
2 Incorporation and utilize some of the same attorneys and human resources personnel to oversee
3 employment-related matters.

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

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

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

26 18. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS must
27 be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under
28 PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform

1 services from which they benefited, and furthermore that the aforementioned entities had the right
2 to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant
3 times herein, so as to be considered the joint employers of PLAINTIFF.

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

7 **PAGA ALLEGATIONS**

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

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

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

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

28 22. PLAINTIFF, on November 30, 2023, through counsel, gave written notice by online
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
2 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
3 in this Complaint (“PAGA Notice”).

4 23. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
5 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
6 Employees.

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

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

15 **FACTUAL ALLEGATIONS**

16 26. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
17 worked for DEFENDANTS in the State of California. At all times referenced herein,
18 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
19 permitted them to work.

20 27. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
21 DEFENDANTS as a non-exempt employee with a job title of head cook and/or a similar title(s)
22 and/or job position(s) from in or around 2022, through on or around October 15, 2023. PLAINTIFF
23 worked for DEFENDANTS at DEFENDANTS’ Temecula, California location(s).

24 28. PLAINTIFF regularly worked at least nine (9) to ten (10) hours per shift, at times
25 working shifts lasting at least fourteen (14) hours per day.

26 29. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
27 DEFENDANTS as hours worked.

28 30. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an

1 hourly basis for time counted by DEFENDANTS as hours worked.

2 31. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
3 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
4 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
5 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
6 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
7 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
8 below.

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

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

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

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

1 Aggrieved Employees were required to perform other off-the-clock work for which they were not
2 compensated.

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

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

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

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

1 second restaurant/facility, resulting in the underpayment of minimum and overtime wages owed to
2 Aggrieved Employees. Based on information and belief, DEFENDANTS failed to pay Aggrieved
3 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
4 Employee worked in California.

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

25 41. Based on information and belief, DEFENDANTS failed to pay Aggrieved
26 Employees for time they were required to spend completing orientation, policy questionnaires,
27 and/or time spent completing the onboarding process including but not limited to reviewing various
28 documents and policies provided by DEFEDANTS. Based on information and belief, this work time

1 was completed off-the-clock and was not compensated.

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

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

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

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

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

24 47. Based on information and belief, DEFENDANTS calculated the owed overtime
25 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
26 based on the minimum wage established for the cities and/or counties within which Aggrieved
27 Employees worked, resulting in the miscalculation and underpayment of overtime wages owed to
28 Aggrieved Employees who worked in cities and/or counties in California with minimum wage rates

1 above the California minimum wage rate.

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

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

13 50. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
14 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
15 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
16 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
17 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
18 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
19 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
20 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
21 completely.

22 51. For example, based on information and belief, Aggrieved Employees were forced to
23 take late meal periods in order to complete assigned job duties. Based on information and belief,
24 Aggrieved Employees were at times interrupted during purported meal periods and/or had meal
25 periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned
26 job duties.

27 52. For example, during approximately at least one-third of PLAINTIFF's shifts,
28 PLAINTIFF was required to clock out for purported meal periods to continue working due to the

1 need to complete assigned job duties, resulting in meal period violations as well as DEFENDANTS'
2 failure to pay PLAINTIFF for all hours worked and the underpayment of wages owed to
3 PLAINTIFF.

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

9 54. Based on information and belief, DEFENDANTS implemented policies and/or
10 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
11 during unpaid meal periods.

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

16 56. Based on information and belief, despite DEFENDANTS' failure to provide lawful
17 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
18 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
19 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
20 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
21 Employees did not receive lawful meal periods.

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

24 58. For example, when PLAINTIFF worked shifts lasting longer than ten (10) and/or
25 twelve (12) hours, PLAINTIFF was not afforded a second thirty-minute off-duty meal period before
26 the end of the tenth hour of work.

27 59. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
28 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further

1 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
2 did DEFENDANTS have any sort of compliant policy in practice.

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

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

13 62. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
14 additional hour of wages at their respective regular rates of compensation for each workday a lawful
15 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
16 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
17 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
18 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
19 compensation for purposes of calculating the owed meal period premium.

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

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

28 65. Based on information and belief, DEFENDANTS did not have a have a compliant

1 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
2 practice.

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

7 67. For example, per DEFENDANTS' unlawful rest period policies and practices,
8 PLAINTIFF was only permitted a maximum of two rest periods per shift even on shifts lasting
9 longer than ten (10) and/or twelve (12) hours, and PLAINTIFF was typically required to work take
10 interrupted rest periods and/or work through one and/or both of her rest periods due to the need to
11 complete assigned job duties and/or lack of coverage.

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

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

18 70. Based on information and belief, DEFENDANTS implemented policies and/or
19 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
20 DEFENDANTS' control during rest periods.

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

24 72. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
25 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
26 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
27 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
28 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,

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

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

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

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

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

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

28 78. DEFENDANTS issued wage statements to Aggrieved Employees that also failed to

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

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

11 80. For example, based on information and belief, wage statements issued by
12 DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee, in violation of Labor
14 Code section 226(a)(9) due to DEFENDANTS' failure to list an overtime rate category at all and/or
15 failure to list a category containing the proper overtime rate.

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

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

22 83. For example, based on information and belief, at times, DEFENDANTS issued wage
23 statements to Aggrieved Employees containing payment for hours worked during previous pay
24 periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate
25 pay period for that retroactive pay, further failing to list the total hours worked for the pay period,
26 including but not limited to, the total hours worked for the pay period the retroactive pay corresponds
27 with.

28 84. For example, based on information and belief, at times, DEFENDANTS issued wage

1 statement(s) to Aggrieved Employees that list a category for “Retro” pay without including the
2 inclusive dates of the accurate pay period for that “Retro” pay, further failing to list the total hours
3 worked for the pay period, including but not limited to, the total hours worked for the pay period
4 the retroactive pay corresponds with, in violation of including but not limited to, Labor Code section
5 226(a)(2) and/or Labor Code section 226(a)(6).

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

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

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

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

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

1 began and ended each work period, time records of meal periods, and accurate itemized wage
2 statements.

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

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

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

20 93. For example, on information and belief, Aggrieved Employees received
21 calls/messages to their personal cell phones/mobile devices from supervisors and/or other
22 Aggrieved Employees regarding scheduling and/or other work tasks but were not provided any
23 and/or full reimbursement from DEFENDANTS for this personal cell phone use. For example,
24 PLAINTIFF was consistently required to respond to work-related calls on her personal cell
25 phone/mobile device from including but not limited to, her manager/supervisor, with each call
26 lasting at least approximately five (5) minutes, however, DEFENDANTS failed to provide
27 PLAINTIFF with any and/or full reimbursement for the business expenses she incurred in being
28 required to use her personal cell phone/mobile device to carry out her assigned job duties. Based on

1 information and belief, Aggrieved Employees were not reimbursed for the cost of using their
2 personal phone for work related purposes and/or the cost of purchasing and/or maintaining work
3 uniforms/work clothing/work shoes, personal protective/safety gear.

4 94. For example, based on information and belief, Aggrieved Employees were not
5 reimbursed for the costs of purchasing and/or maintaining work uniforms/work clothing/work shoes,
6 personal protective/safety gear, such as, but not limited to, face masks, gloves, hairnets and/or work
7 shoes.

8 95. Based on information and belief, DEFENDANTS required Aggrieved Employees to
9 purchase and/or maintain work tools and/or equipment required to perform their assigned job duties.
10 For example, PLAINTIFF was required to purchase work tools and/or equipment required to carry
11 out her assigned job duties, including without limitation, cleaning supplies, writing materials and/or
12 other inventory management items, cutting boards and/or other kitchen supplies and/or utensils
13 and/or other work tools and/or equipment required to carry out her assigned job duties, however,
14 DEFENDANTS failed to provide any and/or full reimbursement for the business expenses
15 PLAINTIFF incurred in connection with being required to purchase and/or maintain work tools
16 and/or equipment required to carry out her assigned job duties.

17 96. Based on information and belief, at times, DEFENDANTS required Aggrieved
18 Employees to use their personal vehicles for work without reimbursing them for the personal vehicle
19 expenses they incurred in connection therewith. For example, based on information and belief, at
20 times, DEFENDANTS required Aggrieved Employees to travel around DEFENDANTS' facilities
21 and/or job sites and/or otherwise use their personal vehicles to carry out their assigned job duties
22 without reimbursing Aggrieved Employees for the expenses incurred in connection with
23 DEFENDANTS' business use of their personal vehicles, including without limitation, cost of fuel,
24 mileage, and wear and tear on the vehicle. As such, DEFENDANTS failed to compensate Aggrieved
25 Employees at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in
26 effect during the relevant period.

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

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

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

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

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

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

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

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

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

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

8 105. Based on information and belief, DEFENDANTS have and continue to have a
9 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
10 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
11 551. For example, on at least approximately five (5) to six (6) occasions during PLAINTIFF's
12 employment, PLAINTIFF was required to work in excess of seven consecutive days, in violation of
13 California's Day of Rest Law. Based on information and belief, PLAINTIFF and/or other Aggrieved
14 Employees were suffered, permitted, or required to work at least seven (7) days consecutively in a
15 workweek, in violation of California law, including but not limited to Labor Code Section 551.

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

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

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

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

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

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

20 111. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
21 that all employers with 26 or more employees are required to provide up to 80 hours for covered
22 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
23 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
24 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
25 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
26 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

27 112. **Seating Violations.** Per section 14(A-B) of all applicable IWC Wage Orders,
28 employees shall be provided with suitable seats when the nature of the work reasonably permits the

1 use of seats and when they are not actively engaged in the work duties that would not permit them
2 to be seated.

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

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

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

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

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

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

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

28 118. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved

1 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
2 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
3 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
4 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
5 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
6 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
7 Labor Code section 351.

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

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

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

25 122. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
26 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
27 were due and owing upon termination or resignation. Based on information and belief,
28 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing

1 requirements of Labor Code sections 201-202.

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

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

17 125. **Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every
18 employee who is discharged shall be paid at the place of discharge, and every employee who quits
19 shall be paid at the office or agency of the employer in the county where the employee has been
20 performing labor. All payments shall be made in the manner provided by law. Based on information
21 and belief, DEFENDANTS have a policy and practice of failing to provide Aggrieved Employees
22 who are terminated with their final paychecks at the place of discharge and/or of failing to provide
23 Aggrieved Employees with their final paychecks at the office or agency of DEFENDANTS in the
24 county where the work was performed, in violation of Labor Code Section 208.

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

26 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

27 127. Based on information and belief, DEFENDANTS required Aggrieved Employees to
28 agree in writing to unlawful conditions of employment including but not limited to including but

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

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

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

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

1 background check.

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

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

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

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

15 Unlawful Inquires into Criminal History

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

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

25 Unlawful PAGA Waiver

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

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

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

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

17 141. **Violation of Labor Code Section 432.6.** Based on information and belief,
18 DEFENDANTS require/required Aggrieved Employees to waive their right to first and/or second
19 meal periods as a condition of working for DEFENDANTS in violation of California law. As such,
20 DEFENDANTS violated including but not limited to, Labor Code section 432.6 by virtue of
21 including but not limited to, requiring Aggrieved Employees to sign invalid meal period waivers as
22 a condition of employment and/or for threatening, retaliating and/or discriminating against and/or
23 terminating Aggrieved Employees because of their refusal to waive their meal period rights.

24 142. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
25 engaged in these same herein described unlawful practices, which led to violations of the California
26 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
27 unlawful practices to all of its employees that it applied to PLAINTIFF.
28

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

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

143. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

Failure to Keep Accurate Records

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

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

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

Meal Period Violations

147. 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

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

1 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
2 *Court* (2012) 53 Cal.4th 1004.

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

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

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

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

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

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

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

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

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

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

19 **Rest Period Violations**

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

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

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

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

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

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

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

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

10 **Failure to Provide Suitable Resting Facilities**

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

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

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

26 167. DEFENDANTS’ failure to provide suitable resting facilities to Aggrieved
27 Employees violated and continues to violate the applicable Wage Order, section 13(B) and the
28 California Labor Code, including but not limited to section 1198.

1 **Minimum and Overtime Wage Violations**

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

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

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

22 171. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
23 Aggrieved Employees for all hours worked.

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

1 Employees.

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

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

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

17 **Statutory Wage Violations**

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

1 **Refusal to Make Payment**

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

10 **Standard Conditions of Labor Violations**

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

19 **Violation of Labor Code Section 208**

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

24 180. Based on information and belief, DEFENDANTS have a policy and practice of
25 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
26

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

1 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
2 office or agency of DEFENDANTS in the county where the work was performed, in violation of
3 Labor Code Section 208.

4 **Business Expense Violations**

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

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

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

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

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

1 186. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and other Aggrieved
2 Employees have suffered injury in that they were not completely reimbursed as mandated by
3 California law.

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

8 188. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
9 Employees have suffered injury in that they were not completely reimbursed as mandated by
10 California law.

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

15 **Wage Statement Violations**

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

25 191. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
26 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
27 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
28 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)

1 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
2 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
3 effect during the pay period and the corresponding number of hours worked at each hourly rate by
4 the employee, in violation of Labor Code section 226(a)(9).

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

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

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

26 195. Separately, and independent from the above allegations, based on information and
27 belief, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees that
28 violate Labor Code section 226(a)(8), by failing to list the correct name and/or address of the legal

1 entity that is the employer.

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

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

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

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

13 200. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
14 Aggrieved Employees with accurate, itemized wage statements.

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

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

27
28 ³ Labor Code § 226.3 (establishing that the civil penalty is ~~42~~ ⁴per employee per violation”).

1 **Unlawful Deductions**

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

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

16 **Reporting Time Pay Violations**

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

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

26 207. Aggrieved Employees were not paid reporting time wages in accordance with
27 California law, including but not limited to the applicable IWC Wage Order. For example, based on
28 information and belief, at times, Aggrieved Employees reported to work for a scheduled shift but

1 were sent home and/or were not put to work and were not paid all owed reporting time pay wages
2 in accordance with California law.

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

9 **Violation of California Day of Rest Law**

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

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

20 **Seating Violations**

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

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

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

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

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

3 213. 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).

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

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

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

22 **Violation of Labor Code section 351 and 353**

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

28 218. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved

1 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
2 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
3 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
4 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
5 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
6 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
7 Labor Code section 351.

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

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

18 **Sick Leave Violations**

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

26 222. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
27 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
28 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used

1 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
2 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

7 224. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
8 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
9 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
10 were entitled to the maximum number of hours accruable.

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

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

17 227. On information and belief, PLAINTIFF alleges that all of these practices were
18 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

1 Labor Code section 248.6.

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

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

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

14 **Untimely Payment of Final Wages**

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

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

28 234. Based on information and belief, DEFENDANTS failed and continue to fail to timely

1 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
2 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF
3 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not
4 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
5 sick leave and/or paid time off wages at the properly accrued rates.

6 235. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
7 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
8 256.

9 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

19 237. Labor Code section 432.6(a), provides that “a person shall not, as a condition of
20 employment, continued employment, or the receipt of any employment-related benefit, require any
21 applicant for employment or any employee to waive any right...”Based on information and belief,
22 DEFENDANTS required Aggrieved Employees to sign meal period waivers that were universally
23 signed as a condition of employment, including but not limited to, during the onboarding process.
24 By requiring Aggrieved Employees to sign unlawful meal period waivers as a condition of obtaining
25 and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these
26 invalid waivers are otherwise unlawful under Labor Code section 432.6.

27 238. Moreover, the California Labor Code places certain procedural and substantive limits
28 on an employers’ ability to conduct employee background checks and on how employers can use

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

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

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

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

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

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

28 Unlawful Inquires into Criminal History

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

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

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

15 Unlawful PAGA Waiver

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

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

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

1 action on behalf of the state.”)

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

7 **Violation of Labor Code Section 432.6**

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

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

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

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

18 255. Based on information and belief, DEFENDANTS require/required Aggrieved
19 Employees to waive their right to first and/or second meal periods as a condition of working for
20 DEFENDANTS in violation of California law. As such, DEFENDANTS violated including but not
21 limited to, Labor Code section 432.6 by virtue of including but not limited to, requiring Aggrieved
22 Employees to sign invalid meal period waivers as a condition of employment and/or for threatening,
23 retaliating and/or discriminating against and/or terminating Aggrieved Employees because of their
24 refusal to waive their meal period rights.

25 256. Under the provisions of PAGA and the above mentioned Labor Code sections,
26 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
27 226.7, 245-248.6, 256, 432.5, 432.6, 432.7, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1194,
28 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2w810.5 and all applicable Wage Orders as well as

1 all interpretations of these laws by California Courts and administrative bodies, as well as any other
2 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: February 7, 2024

CROSNER LEGAL, PC

By: 

Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff
JENTILA CALLAS