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on behalf of the State of California
and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

BRAD ENGELDINGER, on behalf of the
State of California and all Aggrieved
Employees,

Plaintiff,

v.

VILLASPORT LLC a Colorado Limited
Liability Company; VILLASPORT CS LLC,
a Colorado Limited Liability Company;
VILLASPORT CY LLC, a Texas Limited
Liability Company; VILLASPORT TW
LLC, a Texas Limited Liability Company;
VILLASPORT BV LLC, an Oregon Limited
Liability Company; VILLASPORT KT
LLC, a Texas Limited Liability Company;
VILLASPORT ROSEVILLE LLC, a
California Limited Liability Company;
VILLASPORT SJ LLC, a California Limited
Liability Company; VILLASPORT RV
LLC, a California Limited Liability
Company; VILLASPORT FITNESS PN
LLC, a California Limited Liability
Company; and DOES 1-100, inclusive,

Defendants.

Case No.: **24CV429641**

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

1 Plaintiff, BRAD ENGELDINGER, (“PLAINTIFF”), on behalf of the State of California and
2 all Aggrieved Employees (as defined below), hereby files this Complaint against Defendants
3 VILLASPORT LLC a Colorado Limited Liability Company; VILLASPORT CS LLC, a Colorado
4 Limited Liability Company; VILLASPORT CY LLC, a Texas Limited Liability Company;
5 VILLASPORT TW LLC, a Texas Limited Liability Company; VILLASPORT BV LLC, an Oregon
6 Limited Liability Company; VILLASPORT KT LLC, a Texas Limited Liability Company;
7 VILLASPORT ROSEVILLE LLC, a California Limited Liability Company; VILLASPORT SJ
8 LLC, a California Limited Liability Company; VILLASPORT RV LLC, a California Limited
9 Liability Company; VILLASPORT FITNESS PN LLC, a California Limited Liability Company;
10 and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is
11 informed and believes and thereon alleges as follows:

12 **INTRODUCTION**

13 1. This is a representative action filed by PLAINTIFF on behalf of PLAINTIFF, all
14 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California’s
15 Private Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties
16 (75% payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
17 Employees) for DEFENDANTS’ violations of the California Labor Code as alleged below.

18 **JURISDICTION AND VENUE**

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

21 3. Venue is proper in the County of Santa Clara pursuant to sections 395 and 395.5 of
22 the California Code of Civil Procedure section 395.5 because transact business within this judicial
23 district and conduct alleged by PLAINTIFF herein occurred in this this judicial district. See also
24 *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal. App. 5th 1069 (venue in a
25 PAGA action is proper in any county where the defendants committed Labor Code violations against
26 some of its employees). Venue is also proper pursuant to section 393 of the California Code of Civil
27 Procedure because the cause, or some part of the cause, arose in the County of Santa Clara.

28

THE PARTIES

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

5. PLAINTIFF is a current employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title of personal fitness trainer and/or a similar title(s) and/or position(s) from in or around July 2019 through at least in or around late June 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Roseville, California location(s).

6. Defendant VILLASPORT LLC is a Colorado Limited Liability Company that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

7. Defendant VILLASPORT CS LLC is a Colorado Limited Liability Company that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

8. Defendant VILLASPORT CY LLC is a Texas Limited Liability Company that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

9. Defendant VILLASPORT TW LLC is a Texas Limited Liability Company that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

10. Defendant VILLASPORT BV LLC is an Oregon Limited Liability Company that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

11. Defendant VILLASPORT KT LLC is a Texas Limited Liability Company that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

12. Defendant VILLASPORT ROSEVILLE LLC is a California Limited Liability Company that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

1 13. Defendant VILLASPORT SJ LLC is a California Limited Liability Company that,
2 at all relevant times, was authorized to do business within the State of California and is doing
3 business in the State of California.

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

7 15. Defendant VILLASPORT FITNESS PN LLC is a California Limited Liability
8 Company that, at all relevant times, was authorized to do business within the State of California and
9 is doing business in the State of California.

10 16. DEFENDANTS own, operate, manage and/or staff its employees to work at
11 including but not limited to, the fitness centers, facilities and/or other location(s) in California,
12 including but not limited to the fitness centers and/or other facilities and/or other locations in
13 Roseville, California, Pleasanton, California, and San Jose, California. DEFENDANTS, through its
14 various locations, serve the consumer goods and services industry.¹

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

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

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¹ See www.villasport.com.. Last visited on January 23, 2024.

1 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
2 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
3 controlled, aided and abetted the conduct of all other Defendants.

4 **JOINT LIABILITY**

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

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

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

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

20 23. For example, based on information and belief, DEFENDANTS, and each of them,
21 share the same principal business office and agent for service of process as provided to the California
22 Secretary of State and share some of the same attorneys and human resources personnel to oversee
23 employment-related matters.

24 24. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
25 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
26 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
27 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
28 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of

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

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

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

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

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

27 **PAGA ALLEGATIONS**

28 29. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
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GENERAL ACT

1 of the State of California and all Aggrieved Employees, regarding violations of the California Labor
2 Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

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

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

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

20 31. PLAINTIFF, on November 17, 2023, through counsel, gave written notice by online
21 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
22 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
23 in this Complaint (“PAGA Notice”).

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

27 33. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
28 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the

1 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
2 PLAINTIFF has exhausted the administrative remedies as required by Labor Code section 2699.3.
3 Consequently, PLAINTIFF's right to file the instant lawsuit has duly accrued.

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

7 FACTUAL ALLEGATIONS

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

12 36. PLAINTIFF is a current employee of DEFENDANTS. PLAINTIFF worked for
13 DEFENDANTS as a non-exempt employee with a job title of personal fitness trainer and/or a similar
14 title(s) and/or position(s) from in or around July 2019 through at least in or around late June 2023.
15 PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Roseville, California location(s).

16 37. PLAINTIFF regularly worked at least eight (8) hours per day.

17 38. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
18 hourly basis for time counted by DEFENDANTS as hours worked. PLAINTIFF was also
19 compensated with commissions, non-discretionary bonuses and/or other non-discretionary
20 compensation.

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

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

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

10 42. For example, based on information and belief, DEFENDANTS required Aggrieved
11 Employees to be at their assigned workstations at the start of a scheduled shift, thereby forcing
12 Aggrieved Employees to gather work-related equipment and/or safety gear, make any necessary
13 adjustments to tools/equipment and/or perform maintenance/cleaning tasks, don work
14 clothing/uniforms and/or protective equipment, and/or complete other work tasks prior to their
15 scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock
16 work.

17 43. Based on information and belief, at times, Aggrieved Employees were required to
18 stand in line behind other employees to access DEFENDANTS' time-keeping system and/or were
19 required to spend time reinitiating DEFENDANTS' time-keeping system before they could clock
20 in for the start of their shifts and/or after completing a purported meal period.

21 44. Based on information and belief, Aggrieved Employees were required to complete
22 other off-the-clock work tasks after clocking out for the end of their shifts and/or during
23 uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum
24 and overtime wages owed to Aggrieved Employees.

25 45. For example, based on information and belief, DEFENDANTS required Aggrieved
26 Employees to clock out for the end of their shifts but to continue working due to the need to
27 return/maintain tools, clean and/or organize their work stations/areas, provide shift status updates
28 and/or debriefings and/or participate in work meetings/communications with clients and/or

1 prospective clients, make and/or respond to work-related communications and/or perform other
2 work tasks off-the-clock, resulting in the underpayment of minimum wages and overtime wages
3 owed to Aggrieved Employees.

4 46. For example, PLAINTIFF was typically required to perform pre-shift and/or post-
5 shift off-the-clock work. For example, on most if not all days PLAINTIFF worked, PLAINTIFF
6 was instructed to clock out as soon as his scheduled shift was over but to continue performing work
7 tasks off-the-clock, including without limitation, communicating with clients and/or devising and/or
8 explaining exercise lessons and/or plans to clients and/or performing other off-the-clock work tasks.

9 47. Also, DEFENDANTS instructed PLAINTIFF to perform additional pre-shift and/or
10 post-shift off-the-clock work, including but not limited to, contacting prospective clients before
11 clocking in and/or after clocking out for PLAINTIFF's scheduled shift and/or on his days off. This
12 time spent under DEFENDANTS' control performing pre-shift and/or post-shift off-the-clock tasks,
13 including but not limited to, contacting prospective clients, communicating with clients and/or
14 devising and/or explaining exercise lessons and/or plans was neither recorded nor compensated,
15 resulting in at least several hours of off-the-clock work per month and DEFENDANTS' failure to
16 compensate PLAINTIFF for all hours worked and the underpayment of minimum and overtime
17 wages owed to PLAINTIFF.

18 48. Also, DEFENDANTS required PLAINTIFF to complete courses, training, testing
19 and/or obtain certifications, including but not limited to, fitness certifications and/or CPR
20 certifications and/or other certifications, trainings and/or testing, however, DEFENDANTS failed
21 to compensate for this off-the-clock work, resulting in DEFENDANTS' failure to pay PLAINTIFF
22 for all work time and the underpayment of wages owed to PLAINTIFF.

23 49. Based on information and belief, PLAINTIFF was required to perform additional
24 off-the-clock work tasks before clocking in/signing in for the start of his shift and/or after clocking
25 out/signing out for the end of his shift.

26 50. For example, based on information and belief, DEFENDANTS did not compensate
27 PLAINTIFF for all time spent preparing for client sessions and/or time spent setting up gym
28 equipment and/or time spent performing administrative tasks and/or completing other off-the-clock

1 work tasks, resulting in DEFENDANTS' failure to pay PLAINTIFF for all hours worked and the
2 underpayment of minimum wage and overtime wages owed to PLAINTIFF.

3 51. Based on information and belief, DEFENDANTS did not compensate Aggrieved
4 Employees for all time spent donning and doffing personal protective equipment, safety equipment
5 and/or uniforms/work clothing (e.g., gloves and/or face masks) during meal periods, before the start
6 of a scheduled shift, and after completing a scheduled shift, resulting in DEFENDANTS' failure to
7 pay Aggrieved Employees for all work time and the underpayment of minimum wages and overtime
8 wages owed to Aggrieved Employees.

9 52. Based on information and belief, at times, DEFENDANTS' electronic employee
10 time-keeping system/app malfunctioned such that Aggrieved Employees were required to either
11 reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable
12 to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-
13 the-clock work and the underpayment of wages owed to Aggrieved Employees.

14 53. Based on information and belief, Aggrieved Employees experienced the same issues
15 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
16 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
17 Aggrieved Employees.

18 54. Based on information and belief, Aggrieved Employees were required to undergo
19 security screenings and/or other mandated screenings before and/or after a scheduled shift and/or
20 before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.

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

24 56. Based on information and belief, Aggrieved Employees were also pressured to
25 complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals
26 and expectations.

27 57. For example, based on information and belief, Aggrieved Employees were required
28 to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-

1 related phone calls and/or messages they received to their phones and/or mobile devices and were
2 required to respond to, including but not limited to, communications from supervisors regarding
3 scheduling and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved
4 Employees.

5 58. Based on information and belief, DEFENDANTS failed to pay Aggrieved
6 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
7 Employee worked in California.

8 59. For example, based on information and belief, DEFENDANTS paid Aggrieved
9 Employees working in the city of San Jose in 2023, at an hourly rate of less than \$17.00, resulting
10 in DEFENDANTS' failure to pay those Aggrieved Employees all owed minimum wages. See e.g.,
11 Title 4 of San Jose Municipal Code, Section 4.100.040(B) (increasing the City of San Jose minimum
12 wage to \$17.00/hour, effective 1.1.23). Based on information and belief, at times, DEFENDANTS
13 instituted a piece-rate-based compensation scheme that resulted in pay periods during which
14 Aggrieved Employees were denied the minimum wage for all hours worked.

15 60. For example, on information and belief, at times, DEFENDANTS paid Aggrieved
16 Employees on a strictly commission and/or piece-rate basis (e.g., per membership/product sold
17 and/or sale/training session completed and/or using a flagged hour basis), at least during some pay
18 periods, during the relevant time period.

19 61. However, based on information and belief, DEFENDANTS failed to separately
20 compensate Aggrieved Employees for all non-piece rate related activities/all non-productive time,
21 including but not limited to, all rest breaks and/or time spent preparing/setting up for jobs, time
22 spent completing paperwork, waiting between jobs and tasks and/or other waiting time, and/or
23 performing work duties that otherwise fall outside of the piece-rate pay criteria. DEFENDANTS'
24 failure to separately compensate Aggrieved Employees for their rest periods and/or other non-
25 productive time and/or failure to compensate them at the correct rates for all non-productive time
26 including rest periods resulted in the failure to pay Aggrieved Employees for all hours worked and
27 violations of California wage and hour laws, including but not limited to, Labor Code sections 226.2
28 and/or 1197. Based on information and belief, DEFENDANTS further failed to include this

1 information on these employees' wage statements required by Labor Code section 226.2.

2 62. Moreover, based on information and belief, DEFENDANTS failed to pay
3 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split
4 shifts during the relevant period.

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

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

28 65. Based in information and belief, DEFENDANTS implemented a time-rounding

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

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

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

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

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

24 70. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
25 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
26 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
27 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
28 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often

1 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
2 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
3 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
4 completely.

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

10 72. For example, based on information and belief, PLAINTIFF was frequently required
11 to take late meal periods due to the need to continue completing assigned job duties and was
12 frequently required to take shortened and/or interrupted meal periods and/or was required to remain
13 on-duty during unpaid meal periods, resulting in denied meal periods and denied wages owed to
14 PLAINTIFF.

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

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

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

27 76. Based on information and belief, despite DEFENDANTS' failure to provide lawful
28 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end

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

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

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

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

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

21 81. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
22 additional hour of wages at their respective regular rates of compensation for each workday a lawful
23 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
24 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
25 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
26 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
27 compensation for purposes of calculating the owed meal period premium.

28 82. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
17
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
2 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
3 middle of the work period, as required by law.

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

8 84. Based on information and belief, DEFENDANTS did not have a have a compliant
9 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
10 practice.

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

15 86. For example, based on information and belief, PLAINTIFF was frequently if not
16 always unable to take compliant rest periods due to his need to complete assigned job duties and/or
17 was unable to take a net ten-minute rest period in a suitable rest area and/or was required to monitor
18 work communication devices and/or remain on DEFENDANTS' premises during any rest periods,
19 in violation of California rest period law.

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

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

26 89. Based on information and belief, DEFENDANTS implemented policies and/or
27 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
28 DEFENDANTS' control during rest periods.

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

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

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

15 93. 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, Aggrieved Employees were forced to adjust to areas not conducive to
21 resting, 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 94. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities
25 during their hours of work, particularly during meal and/or rest periods.

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

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

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

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

20 99. Based on information and belief, DEFENDANTS issued wage statements to
21 Aggrieved Employees that failed to list the number of piece-rate units earned and/or all applicable
22 piece rate(s) of pay, in violation of Labor Code section 226(a)(3).

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

27 101. For example, based on information and belief, wage statements issued by
28 DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee, in violation of Labor
2 Code section 226(a)(9) due to DEFENDANTS' failure to list an overtime rate category at all and/or
3 failure to list a category containing the proper overtime rate.

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

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

10 104. For example, based on information and belief, wage statements issued by
11 DEFENDANTS failed to list the inclusive dates of the pay period for which the Aggrieved
12 Employee is being paid. For example, based on information and belief, at times, DEFENDANTS
13 issued wage statements to Aggrieved Employees containing payment for hours worked during
14 previous pay periods, yet DEFENDANTS' wage statements do not include the inclusive dates of
15 the accurate pay period for that retroactive pay, further failing to list the total hours worked for the
16 pay period, including but not limited to, the total hours worked for the pay period the retroactive
17 pay corresponds with.

18 105. For example, based on information and belief, DEFENDANTS' wage statements
19 provided to Aggrieved Employees list a category for "Retro" and/or retroactive pay without
20 including the inclusive dates of the accurate pay period for that retroactive pay, further failing to list
21 the total hours worked for the pay period, including but not limited to, the total hours worked for
22 the pay period the retroactive pay corresponds with, in violation of including but not limited to,
23 Labor Code sections 226(a)(2) and/or 226(a)(6).

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

27 107. Based on further information and belief, DEFENDANTS issued wage statements to
28 Aggrieved Employees that failed to list the accurate total hours worked whenever shift differential

1 wages were paid in violation of Labor Code section 226.

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

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

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

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

27 112. **Failure to Provide Written Commission Agreements.** Labor Code section 2751
28 requires that all commission contracts "be in writing and . . . set forth the method by which the

1 commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute,
2 employers must also "give a signed copy of the contract to every employee who is a party [to the
3 contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section 2751(b).

4 113. Based on information and belief, DEFENDANTS failed to provide Aggrieved
5 Employees who were compensated on a commission basis with proper written commission
6 agreements, in violation of Labor Code section 2751.

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

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

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

1 Aggrieved Employees were improperly required to provide and maintain work tools that are
2 supposed to be the responsibility of the employer, including but not limited to, including but not
3 limited to, uniforms, work clothing/shoes, protective equipment/safety gear (e.g., gloves and/or face
4 masks) and/or the use of Aggrieved Employees' personal mobile phone and data usage for work-
5 related purposes, including but not limited to, receiving and responding to work related messages
6 and/or phone calls.

7 117. For example, based on information and belief, other Aggrieved Employees were also
8 required to make and/or receive also work-related calls/messages to/from their personal
9 phones/mobile devices from managers and/or supervisors, DEFENDANTS' clients/prospective
10 clients, and/or other Aggrieved Employees without receiving any and/or full reimbursement from
11 DEFENDANTS for these business expenses.

12 118. For example, DEFENDANTS required PLAINTIFF to consistently use his personal
13 cell phone/mobile device including but not limited to, to communicate with DEFENDANTS' clients
14 and/or prospective clients, however, DEFENDANTS failed to reimburse PLAINTIFF at all and/or
15 in full for the business expenses PLAINTIFF incurred in connection with being required to use his
16 personal cell phone/mobile device to carry out his assigned job duties, including but not limited to,
17 increased data plan charges.

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

22 120. For example, DEFENDANTS required PLAINTIFF to supply his own work tools
23 and/or equipment, including but not limited to, stop watches, hand grip squeezers, boxing
24 mitts/gloves, protective head gear and/or other gym equipment/hand tools PLAINTIFF required to
25 carry out his assigned job duties, however, DEFENDANTS failed to reimburse PLAINTIFF at all
26 and/or in full for these business expenses.

27 121. Moreover, PLAINTIFF was required to incur additional business expenses in
28 carrying out his assigned job duties without receiving any and/or full reimbursement from

1 DEFENDANTS for the business expenses PLAINTIFF incurred in connection therewith. For
2 example, DEFENDANTS required PLAINTIFF to complete courses, training, testing and/or obtain
3 certifications to obtain and/or maintain employment, however, DEFENDANTS failed to reimburse
4 PLAINTIFF at all and/or in full for the business expenses he incurred in connection therewith,
5 including without limitation, cost of traveling to testing locations and/or cost of
6 obtaining/completing trainings, testing, and/or certifications, resulting in thousands of dollars in
7 business expenses incurred by PLAINTIFF that were unreimbursed by DEFENDANTS.

8 122. For example, DEFENDANTS required PLAINTIFF to consistently use his personal
9 cell phone/mobile device to including but not limited to, communicate with DEFENDANTS' clients
10 and/or prospective clients, however, DEFENDANTS failed to reimburse PLAINTIFF at all and/or
11 in full for the business expenses he incurred in connection with being required to use his personal
12 cell phone/mobile device to carry out his assigned job duties, including but not limited to, increased
13 data plan charges.

14 123. Also, PLAINTIFF was required to purchase uniforms/work clothing/work shoes,
15 including but not limited to, slacks/pants of a specific color and/or specific brand as mandated by
16 DEFENDANTS, however, DEFENDANTS failed to provide PLAINTIFF with any and/or full
17 reimbursement for the business expenses he incurred in connection with the purchase and/or
18 maintenance of DEFENDANTS' uniforms/required work clothing/work shoes.

19 124. Moreover, based on information and belief, Aggrieved Employees also were required
20 to use and did use personal devices to perform work duties at home/remotely, such as, but not limited
21 to, reviewing and/or completing work-related paperwork and/or other documents as mandated by
22 DEFENDANTS, however DEFENDANTS failed to provide reimbursement / full reimbursement
23 for expenses Aggrieved Employees incurred as a result of working for DEFENDANTS remotely
24 and/or from their homes, including but not limited to, cost of internet service, home electricity, cost
25 of additional memory and/or virus software for home computer / home computer use, among other
26 business expenses associated with remote work required by DEFENDANTS. For example,
27 DEFENDANTS required PLAINTIFF to contact prospective clients including but not limited to on
28 his days off. As a result, PLAINTIFF was required to use his home internet, electricity, and other

1 utilities in the discharge of his job duties, however, DEFENDANTS did not provide PLAINTIFF
2 with any and/or full reimbursement for these business expenses incurred as a result of
3 DEFENDANTS' required remote work/work from home.

4 125. Based on information and belief, Aggrieved Employees were not reimbursed for the
5 business use of their personal vehicles, including but not limited to, mileage, wear and tear, and/or
6 cost of fuel when they were required to drive between job sites/facilities and/or otherwise use their
7 personal vehicles for DEFENDANTS' business purposes. For example, based on information and
8 belief, at times, Aggrieved Employees were required to use their personal vehicles to drive between
9 DEFENDANTS' various facilities, offices and/or locations and/or otherwise use their personal
10 vehicles to carry out their assigned job duties but were not provided any and/or full reimbursement
11 for DEFENDANTS' business use of their personal vehicles. As such, DEFENDANTS failed to
12 compensate Aggrieved Employees at the Internal Revenue Service (IRS) mandated per mile
13 compensation rate for the relevant period.

14 126. Based on information and belief, DEFENDANTS regularly failed to reimburse and
15 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
16 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
17 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
18 assigned by DEFENDANTS.

19 127. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
20 for all reasonable expenses associated with carrying out their duties required that Aggrieved
21 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
22 2802.

23 128. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
24 provides as follows:

25 129. (A) Each workday an employee is required to report for work and does report, but is
26 not put to work or is furnished less than half said employee's usual or scheduled day's work, the
27 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
28 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less

1 than the minimum wage. (B) If an employee is required to report for work a second time in any one
2 workday and is furnished less than two (2) hours of work on the second reporting said employee
3 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
4 minimum wage.

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

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

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

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

25 134. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
26 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
27 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the
28 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the

1 accrued sick leave hours on the correct number of hours worked (as a result of the
2 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
3 times/other required off-the-clock work including but not limited to unpaid meal periods) and by
4 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
5 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
6 compensation into the sick leave pay rate calculation.

7 135. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
8 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
9 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
10 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
11 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
12 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
13 used sick leave and the balance of paid sick leave.

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

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

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

1 139. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
2 that all employers with 26 or more employees are required to provide up to 80 hours for covered
3 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
4 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
5 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
6 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
7 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

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

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

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

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

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

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

26 144. Moreover, based on information and belief, the nature of the work reasonably
27 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
28 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of

1 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
2 of seats would not interfere with the performance of their duties.

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

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

15 **147.** Upon separation of employment, Aggrieved Employees' final paychecks were not
16 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
17 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
18 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
19 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
20 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate
21 including non-discretionary compensation, including but not limited to, shift differentials).

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

1 section 201-202.

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

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

11 151. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

12 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

13 152. Based on information and belief, DEFENDANTS required Aggrieved Employees to
14 agree in writing to unlawful conditions of employment including but not limited to, unlawful non-
15 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements,
16 unlawful releases and/or waivers, including but not limited to, unlawful meal period waivers,
17 unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful
18 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
19 violation of Labor Code section 432.5.

20 153. Labor Code section 432.6(a), provides that “a person shall not, as a condition of
21 employment, continued employment, or the receipt of any employment-related benefit, require any
22 applicant for employment or any employee to waive any right...”

23 154. Based on information and belief, DEFENDANTS also required Aggrieved
24 Employees to sign meal period waivers that were universally signed as a condition of employment,
25 including but not limited to, during the onboarding process. By requiring Aggrieved Employees to
26 sign unlawful meal period waivers as a condition of obtaining and/or maintaining employment,
27 DEFENDANTS violated Labor Code section 432.5. Further, these invalid waivers are otherwise
28 unlawful under Labor Code section 432.6. Based on information and belief, DEFENDANTS

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

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

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

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

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

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

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

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

14 Unlawful Inquires into Criminal History

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

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

24 Unlawful PAGA Waiver

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

28 165. An action pursuant to PAGA “...is a representative action on behalf of the state”

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

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

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

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

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

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)

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

Failure to Keep Accurate Records

171. 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.

172. 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.

173. 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.²

Meal Period Violations

174. 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

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

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

3 175. 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.*

6 176. 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”).

14 177. 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.

21 178. 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.

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

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

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

5 181. 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.

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

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

19 **Rest Period Violations**

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

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

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

16 186. 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.

22 187. 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.

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

1 189. 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.

7 190. 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**

11 191. 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.”

15 192. 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, Aggrieved Employees were forced to adjust to areas not conducive to
21 resting, 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.

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

26 194. DEFENDANTS’ failure to provide suitable resting facilities to Aggrieved
27 Employees violated and continue 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**

2 195. 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.

9 196. 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.*

15 197. 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.

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

24 199. 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.

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

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

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

17 **Failure to Provide Written Commission Agreements**

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

23 204. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
24 Aggrieved Employees who were compensated on a commission basis with proper written
25 commission agreements, in violation of Labor Code section 2751.

26 **Violation of Labor Code Section 226.2**

27 205. Labor Code section 226.2 requires an employer to pay employees compensated on a
28 piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any

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

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

16 **Statutory Wage Violations**

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

1 **Refusal to Make Payment**

2 208. 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.³

10 **Standard Conditions of Labor Violations**

11 209. 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 **Business Expense Violations**

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

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

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

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

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

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

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

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

26 217. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
27 Employees have suffered injury in that they were not completely reimbursed as mandated by
28 California law.

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

5 **Wage Statement Violations**

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

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

23 221. Moreover, due to violations detailed above, including but not limited to,
24 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
25 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
26 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
27 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
28 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based

1 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
2 compensation earned during the pay period into the regular rate of pay for purposes of calculating
3 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
4 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

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

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

25 227. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
26 they could not easily determine whether they received all wages owed to them and whether they
27 were paid for all hours worked.

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

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

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

14 231. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
15 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
16 during which the statute provisions were violated. ⁴

17 **Unlawful Deductions**

18 232. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
19 an employee any part of wages theretofore paid by said employer to said employee." Based on
20 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
21 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
22 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
23 Section 2699.

24 233. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
25 each pay period during which the statute provisions were violated. See Lab. Code §225.5
26 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
27 provided in this article, every person who unlawfully withholds wages due any employee in

28 ⁴ Labor Code § 226.3 (establishing that the civil penalty is ~~4~~⁷ per employee per violation").

1 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
2 to pay each employee”).

3 **Reporting Time Pay Violation.**

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

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

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

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

23 **Violation of California Day of Rest Law**

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

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

6 **Seating Violations**

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

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

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

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

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

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

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

1 245. The Aggrieved Employees worked in various positions. The nature of Aggrieved
2 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
3 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
4 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
5 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
6 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
7 separate civil penalty.

8 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

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

27 256. Based on information and belief, DEFENDANTS had and continue to have a
28 uniform policy and practice of failing to allow Aggrieved Employees to use their earned

1 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
2 to Aggrieved Employees upon separation of employment, in violation of California law, including
3 but not limited to, Labor Code section 227.3.

4 **Untimely Payment of Final Wages**

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

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

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

24 260. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
25 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
26 256.

27 **Violation of Labor Code Section 208**

28 261. Labor Code Section 208 provides: Every employee who is discharged shall be paid

1 at the place of discharge, and every employee who quits shall be paid at the office or agency of the
2 employer in the county where the employee has been performing labor. All payments shall be made
3 in the manner provided by law.

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

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

10 263. *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 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
14 conditions of employment including but not limited to, 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 and/or unlawful criminal and/or financial
18 checks as a condition of obtaining and/or continuing employment in violation of Labor Code section
19 432.5.

20 264. Labor Code section 432.6(a), provides that “a person shall not, as a condition of
21 employment, continued employment, or the receipt of any employment-related benefit, require any
22 applicant for employment or any employee to waive any right...”

23 265. Based on information and belief, DEFENDANTS required Aggrieved Employees to
24 sign meal period waivers that were universally signed as a condition of employment, including but
25 not limited to, during the onboarding process. By requiring Aggrieved Employees to sign unlawful
26 meal period waivers as a condition of obtaining and/or maintaining employment, DEFENDANTS
27 violated Labor Code section 432.5. Further, these invalid waivers are otherwise unlawful under
28 Labor Code section 432.6. Based on information and belief, DEFENDANTS ordered unlawful

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

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

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

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

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

1 270. Based on further information and belief, DEFENDANTS knew that requiring
2 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
3 condition of obtaining and/or holding employment was unlawful.

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

6 Unlawful Inquires into Criminal History

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

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

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

21 Unlawful PAGA Waiver

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

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

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

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

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

13 **Violation of Labor Code Section 432.6**

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

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

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

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

24 283. Based on information and belief, DEFENDANTS require/required Aggrieved
25 Employees to waive their right to first and/or second meal periods as a condition of working for
26 DEFENDANTS in violation of California law. As such, DEFENDANTS violated including but not
27 limited to, Labor Code section 432.6 by virtue of including but not limited to, requiring Aggrieved
28 Employees to sign invalid meal period waivers as a condition of employment and/or for threatening,

1 retaliating and/or discriminating against and/or terminating Aggrieved Employees because of their
2 refusal to waive their meal period rights.

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

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

19 285. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
20 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: January 23, 2024

CROSNER LEGAL, PC

By: 

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BRAD ENGELDINGER