

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

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Attorneys for Plaintiffs MIRIAM MARTINEZ and LA MANTA BATES
on behalf of the State of California and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MIRIAM MARTINEZ and LA MANTA
BATES, on behalf of the State of California
and all Aggrieved Employees,

Plaintiffs,

v.

YOSHINOYA AMERICA, INC., a
Delaware Corporation; and DOES 1-100,
inclusive,

Defendants.

Case No.: **24STCV02032**

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

1 Plaintiffs, MIRIAM MARTINEZ and LA MANTA BATES, (“PLAINTIFFS”), on behalf of
2 the State of California and all Aggrieved Employees (as defined below), hereby file this Complaint
3 against Defendants YOSHINOYA AMERICA, INC., a Delaware Corporation; and DOES 1-100,
4 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFFS are informed and
5 believe and thereon allege as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

15 3. Venue is proper in the County of Los Angeles pursuant to sections 395 and 395.5 of
16 the California Code of Civil Procedure because DEFENDANTS transact business within this
17 judicial district, DEFENDANTS operate locations within this judicial district, and conduct alleged
18 by PLAINTIFFS herein occurred in this judicial district. See also *Crestwood Behavioral Health,*
19 *Inc. v. Superior Court* (2021) 60 Cal. App. 5th 1069 (venue in a PAGA action is proper in any
20 county where the defendants committed Labor Code violations against some of its employees).
21 Venue is also proper pursuant to section 393 of the California Code of Civil Procedure because the
22 cause, or some part of the cause, arose in the County of Los Angeles.

23 **THE PARTIES**

24 4. PLAINTIFFS are, and at all relevant times, were individuals domiciled in the State
25 of California and citizens of the State of California.

26 5. PLAINTIFFS are former employees of DEFENDANTS. PLAINTIFFS worked for
27 DEFENDANTS as non-exempt employees.

28 6. PLAINTIFF MIRIAM MARTINEZ (“PLAINTIFF MARTINEZ”) worked for
2
PLAINTIFFS’ REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 DEFENDANTS as a non-exempt employee with a job title(s) of cashier and/or cook and/or a similar
2 title(s) and/or position(s) from in or around 2017 through on or around September 25, 2023.
3 PLAINTIFF MARTINEZ regularly worked at least five and one-half (5 ½) hours per day, at least
4 three (3) days per week. PLAINTIFF MARTINEZ worked for DEFENDANTS at DEFENDANTS'
5 South Gate, California location(s).

6 7. PLAINTIFF LA MANTA BATES ("PLAINTIFF BATES") worked for
7 DEFENDANTS as a non-exempt shift lead and/or similar title(s) and/or position(s) from on or
8 around April 4, 2022, through on or around March 24, 2023. PLAINTIFF BATES regularly worked
9 at least ten (10) to twelve (12) hours per day. PLAINTIFF BATES worked for DEFENDANTS at
10 DEFENDANTS' Sun Valley, Van Nuys and Chatsworth, California locations.

11 8. Defendant YOSHINOYA AMERICA, INC. is a Delaware Corporation that, at all
12 relevant times, was authorized to do business within the State of California and is doing business in
13 the State of California.

14 9. DEFENDANTS own, operate, manage and/or staff its employees to work at the
15 restaurants and/or other facilities and/or other location(s) in California, including but not limited to,
16 the restaurants and/or other facilities in South Gate, Sun Valley, Van Nuys and Chatsworth and
17 other cities throughout California. DEFENDANTS, through its various locations, serve the
18 restaurant industry.¹

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

25 11. PLAINTIFFS are further informed and believe that, at all relevant times, each
26 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
27

28 ¹ See <https://www.yoshinoyaamerica.com/locations>. Last visited on January 25, 2024.

1 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
2 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
3 the other defendants in a joint enterprise for profit and bore such other relationships to some or all
4 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
5 complaint. PLAINTIFFS are further informed and believes and thereon alleges that each Defendant
6 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
7 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
8 controlled, aided and abetted the conduct of all other Defendants.

9 JOINT LIABILITY

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

27 13. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFFS and other
28 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of

1 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
2 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
3 over wages, hours and working conditions of PLAINTIFFS and Aggrieved Employees; (2) suffered
4 or permitted PLAINTIFFS and Aggrieved Employees to work for them; and (3) engaged
5 PLAINTIFFS and Aggrieved Employees to work for them.

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

19 15. PLAINTIFFS are informed and believe, and thereon alleges that at all times relevant
20 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFFS and Aggrieved
21 Employees upon whose behalf PLAINTIFFS brings these allegations and cause of action, in that
22 DEFENDANTS, exercised sufficient control over PLAINTIFFS and the Aggrieved Employees’
23 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
24 considered the joint employers of PLAINTIFFS and Aggrieved Employees.

25 16. Upon information and belief, PLAINTIFFS allege that DEFENDANTS created a
26 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
27 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
28 working conditions that were distributed to, and/or applied to PLAINTIFFS and Aggrieved

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

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

16 18. PLAINTIFFS are informed and believe that DEFENDANTS exercised the same
17 control over, applied the same policies and practices, and engaged in the same acts and omissions
18 with regard to the other Aggrieved Employees.

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

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

28 **PAGA ALLEGATIONS**

1 21. PLAINTIFFS bring this action under the PAGA, as a representative action on behalf
2 of themselves, the State of California, and all Aggrieved Employees, regarding violations of the
3 California Labor Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved
4 Employees” include:

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

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

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

22 23. PLAINTIFF MARTINEZ and PLAINTIFF BATES, on November 15, 2023, through
23 counsel, gave written notice by online filing with the California Labor and Workforce Development
24 Agency (“LWDA”) informing it that DEFENDANTS failed to comply with California’s labor laws
25 with regard to the allegations alleged in this Complaint (“Martinez et al. PAGA Notice”).

26 24. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
27 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
28 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.

1 PLAINTIFFS have exhausted the administrative remedies as required by Labor Code section
2 2699.3. Consequently, PLAINTIFFS' right to file the instant lawsuit has duly accrued.

3 25. The Martinez et. al. PAGA Notice outlined PLAINTIFFS' claims for violations of
4 the California Labor Code and the applicable wage orders on behalf of PLAINTIFFS, the State of
5 California and all Aggrieved Employees.

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

9 **FACTUAL ALLEGATIONS**

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

14 28. PLAINTIFF MARTINEZ worked for DEFENDANTS as a cashier and/or cook
15 and/or similar title(s) and/or position(s) from in or around 2017 through on or around September 25,
16 2023. PLAINTIFF MARTINEZ regularly worked at least five and one-half (5 ½) hours per day.
17 PLAINTIFF MARTINEZ worked for DEFENDANTS at DEFENDANTS' South Gate, California,
18 location(s).

19 29. PLAINTIFF BATES worked for DEFENDANTS as a non-exempt shift lead and/or
20 similar title(s) and/or position(s) from on or around April 4, 2022, through on or around March 24,
21 2023. PLAINTIFF BATES regularly worked at least ten (10) to twelve (12) hours per day.
22 PLAINTIFF BATES worked for DEFENDANTS at DEFENDANTS' Sun Valley, Van Nuys, and
23 Chatsworth, California, locations.

24 30. DEFENDANTS paid PLAINTIFFS an hourly rate for time counted by
25 DEFENDANTS as hours worked.

26 31. At all relevant times, PLAINTIFFS were non-exempt employees that were paid on
27 an hourly basis for time counted by DEFENDANTS as hours worked.

28 32. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate

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

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

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

17 35. For example, based on information and belief, DEFENDANTS have a policy and
18 practice of requiring Aggrieved Employees to perform off-the-clock work outside of scheduled shift
19 times and/or prior to clocking in for the start of their shifts and/or after clocking out for the end of
20 their shifts, resulting in the underpayment of wages owed to Aggrieved Employees.

21 36. For example, Aggrieved Employees were required to perform work tasks prior to
22 clocking in for the start of their shifts and/or after clocking out for the end of their shifts and/or
23 during unpaid meal periods.

24 37. For example, PLAINTIFF MARTINEZ was at times required to complete work tasks
25 before clocking in for work and/or after clocking out of work as DEFENDANTS did not want
26 PLAINTIFF MARTINEZ to continue working overtime hours. As such, PLAINTIFF MARTINEZ
27 was at times forced to complete PLAINTIFF MARTINEZ's work tasks off-the-clock in order to
28 avoid and/or reduce the number of overtime hours worked. DEFENDANTS knew that the assigned

1 workload would require PLAINTIFF MARTINEZ to work well over eight (8) hours in a shift and
2 knew when PLAINTIFF MARTINEZ worked off-the-clock in order to complete assigned job
3 duties, yet DEFENDANTS failed to pay PLAINTIFF MARTINEZ for all hours worked.

4 38. For example, PLAINTIFF MARTINEZ was sometimes required to clock out for the
5 end of her shift but to continue completing work tasks off-the-clock, including but not limited to,
6 taking out the trash and/or washing dishes and/or other off-the-clock work tasks, but was not
7 compensated for this work time, resulting in DEFENDANTS' failure to compensate PLAINTIFF
8 MARTINEZ for all hours worked and the underpayment of wages owed to PLAINTIFF
9 MARTINEZ.

10 39. Similarly, PLAINTIFF BATES was at times required to perform off-the-clock work
11 tasks prior to clocking in for the start of her shift and/or after clocking out for the end of her shift
12 and/or during unpaid meal periods. For example, PLAINTIFF BATES was at times required to
13 clock out for the end of her shift but to continue performing work tasks such as but not limited to,
14 taking out the trash and/or conducting inventory and/or completing other off-the-clock work tasks
15 but was not compensated for this work time, resulting in DEFENDANTS' failure to compensate
16 PLAINTIFF BATES for all hours worked and the underpayment of wages owed to PLAINTIFF
17 BATES.

18 40. Based on information and belief, at times, other Aggrieved Employees were also
19 required to perform work tasks before clocking in for the start of their shifts and/or after clocking
20 out for the end of their shifts, including but not limited to, preparing food, cleaning DEFENDANTS'
21 facilities, taking out the trash, performing administrative tasks, providing shift debriefings and/or
22 attending work meetings and/or reviewing safety policy documents, meeting handouts and/or other
23 documents as required by DEFENDANTS.

24 41. Based on information and belief, DEFENDANTS did not compensate Aggrieved
25 Employees for time spent donning and doffing personal protective equipment and/or uniforms (e.g.,
26 rubber gloves, hairnets, aprons, hats, and/or face masks) during meal periods, before the start of a
27 scheduled shift, and/or after completing a scheduled shift, resulting in the underpayment of wages
28 owed to Aggrieved Employees.

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

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

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

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

27 46. Based on information and belief, at times, DEFENDANTS require/required
28 Aggrieved Employees to travel between DEFENDANTS' restaurants, facilities and/or locations

1 without compensating Aggrieved Employees for the travel time. For example, based on information
2 and belief, due to scheduling issues and/or understaffing, Aggrieved Employees were at times
3 required after working at their scheduled facility location to cover a shift at another of
4 DEFENDANTS' restaurants/facilities/locations but were not compensated for the time spent driving
5 to the second restaurant/facility, resulting in the underpayment of minimum and overtime wages
6 owed to Aggrieved Employees.

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

1 “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in
2 addition to the minimum wage for that workday...).

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

8 49. Based in information and belief, DEFENDANTS implemented a time-rounding
9 system that as applied systematically deprived PLAINTIFFS and other Aggrieved Employees of
10 compensable time because the time-rounding system implemented by DEFENDANTS would
11 almost always, if not always, result in understating actual compensable work time.

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

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

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

27 53. Based on information and belief, DEFENDANTS failed to incorporate all non-
28 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive

1 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
2 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
3 wages owed to PLAINTIFFS and other Aggrieved Employees.

4 54. Based on information and belief, DEFENDANTS sometimes paid PLAINTIFFS
5 and/or other Aggrieved Employees multiple rates of base pay in one workweek but failed to
6 incorporate all multiple rates of base pay into the regular rate of pay for purposes of calculating the
7 owed overtime rate. For example, at times, PLAINTIFFS and/or other Aggrieved Employees earned
8 multiple base pay rates during the same workweek, yet, DEFENDANTS failed to incorporate
9 all/both base pay rates into the regular rate of pay for purposes of calculating the owed overtime
10 rate, resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFFS
11 and/or other Aggrieved Employees. Based on information and belief, DEFENDANTS similarly
12 failed to incorporate multiple base rates of pay earned in a workweek by other Aggrieved Employees
13 into the regular rate of pay used to calculate the owed overtime rate(s), resulting in unpaid wages to
14 Aggrieved Employees.

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

24 56. For example, PLAINTIFF MARTINEZ was frequently required to work through part
25 or all of her owed meal periods due to including but not limited to lack of relief workers/lack of
26 coverage.

27 57. Similarly, PLAINTIFF BATES was frequently forced to take interrupted meal
28 periods, cut her meal periods short and/or take her meal periods late (i.e. after working more than

1 five (5) hours) due to the need to complete assigned job duties. For example, PLAINTIFF BATES
2 was almost always, if not always, forced to take her meal period after the fifth hour of work due to
3 the need to assist customers and/or complete other assigned job duties.

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

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

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

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

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

24 63. For example, based on information and belief, when Aggrieved Employees worked
25 more than ten (10) and/or twelve (12) hours in a shift, they were not provided with any version of a
26 second meal period.

27 64. For example, when PLAINTIFF BATES worked more than ten (10) and/or twelve
28 (12) hours in a shift, PLAINTIFF BATES was not provided with any version of a second meal

1 period.

2 65. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFFS
3 and other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on
4 further information and belief, DEFENDANTS did not have a compliant written meal period policy,
5 nor did DEFENDANTS have any sort of compliant policy in practice.

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

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

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

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

27 70. PLAINTIFFS and other Aggrieved Employees were not adequately informed,
28 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California

1 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
2 the taking or timing of duty-free rest periods.

3 71. Based on information and belief, DEFENDANTS did not have a have a compliant
4 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
5 practice.

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

10 73. For example, PLAINTIFFS rarely if ever received a ten-minute, uninterrupted off-
11 duty rest period, including but not limited to, during the statutory period, due to including but not
12 limited to, lack of relief workers and/or the need to complete assigned job duties.

13 74. Based on information and belief, Aggrieved Employees' rest periods were
14 interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and
15 constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring
16 Aggrieved Employees to skip rest breaks completely or otherwise take non-compliant rest periods.

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

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

23 77. Based on information and belief, DEFENDANTS implemented policies and/or
24 practices that failed to relieve PLAINTIFFS and other Aggrieved Employees of all duties and
25 DEFENDANTS' control during rest periods.

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

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

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

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

21 82. For example, PLAINTIFF MARTINEZ was denied any suitable area to rest,
22 including but not limited to, a suitable breakroom, and as a result, was often required to eat and/or
23 take any breaks outside and/or otherwise adjust to areas not conducive to resting.

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

26 84. 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 85. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
2 provide PLAINTIFFS and other Aggrieved Employees with accurate wage statements that complied
3 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFFS and Aggrieved
4 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
5 DEFENDANTS issued to PLAINTIFFS 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 86. DEFENDANTS issued wage statements to PLAINTIFFS 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 PLAINTIFFS
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 87. 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 during the pay period, in violation of, including but not limited to, Labor Code section
20 226(a)(2).

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

23 89. 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 90. Moreover, based on information and belief, DEFENDANTS issued wage statements
28 to PLAINTIFFS and Aggrieved Employees that further violate Labor Code section 226(a), by

1 among other things, failing to list the correct name and/or address of the legal entity that is the
2 employer, in violation of Labor Code section 226(a)(8).

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

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

9 93. As a result, DEFENDANTS issued wage statements to PLAINTIFFS and Aggrieved
10 Employees that were not accurate and did not include all of the statutorily required information. As
11 such, DEFENDANTS violated Labor Code section 226.

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

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

28 96. DEFENDANTS have failed and continue to fail to keep accurate and complete

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

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

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

17 99. For example, on information and belief, Aggrieved Employees received
18 calls/messages to their personal cell phones/mobile devices from supervisors and/or other
19 Aggrieved Employees regarding scheduling and/or other work tasks but were not provided any
20 and/or full reimbursement from DEFENDANTS for this personal cell phone use.

21 100. Based on information and belief, Aggrieved Employees were not reimbursed for the
22 cost of using their personal phone for work related purposes and/or the cost of purchasing and/or
23 maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

24 101. For example, based on information and belief, Aggrieved Employees were not
25 reimbursed for the costs of purchasing and/or maintaining work uniforms/work clothing/work shoes,
26 personal protective/safety gear, such as, but not limited to, face masks, gloves, hairnets and/or work
27 shoes.

28 102. For example, DEFENDANTS required PLAINTIFF BATES to supply her own work

1 pants in a specific brand and/or color and/or other uniforms/work clothing/shoes, however,
2 DEFENDANTS did not provide any and/or full reimbursement for the business expenses
3 PLAINTIFF BATES incurred in connection with the purchase and/or maintenance of
4 DEFENDANTS' uniforms/required work clothing/shoes.

5 103. Based on information and belief, at times, DEFENDANTS required Aggrieved
6 Employees to use their personal vehicles for work without reimbursing them for the personal vehicle
7 expenses they incurred in connection therewith.

8 104. For example, based on information and belief, at times, DEFENDANTS required
9 Aggrieved Employees to travel from one of DEFENDANTS' facilities/restaurants to a second of
10 DEFENDANTS' facilities/restaurants for work and/or otherwise required Aggrieved Employees to
11 use their personal vehicles to carry out their assigned job duties without reimbursing Aggrieved
12 Employees for the expenses incurred in connection with DEFENDANTS' business use of their
13 personal vehicles.

14 105. For example, DEFENDANTS required PLAINTIFFS to use their personal vehicles
15 to carry out their assigned job duties, including but not limited to, traveling to DEFENDANTS'
16 other locations/restaurants/facilities to pick up items, however, DEFENDANTS failed to provide
17 PLAINTIFFS with any and/or full reimbursement for the business expenses PLAINTIFF
18 MARTINEZ incurred as a result of being required to use her personal vehicle for work, including
19 but not limited to, reimbursement for cost of fuel, mileage and/or vehicle wear and tear.

20 106. As explained above, based on information and belief, Aggrieved Employees were
21 not reimbursed for the cost of using their personal phone for work related purposes and/or the cost
22 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
23 protective/safety gear.

24 107. Based on information and belief, DEFENDANTS regularly failed to reimburse and
25 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
26 2802, PLAINTIFFS and Aggrieved Employees were entitled to be reimbursed for all reasonable
27 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
28 assigned by DEFENDANTS.

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

5 109. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
6 provides as follows:

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

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

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

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

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

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

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

24 117. Based on information and belief, throughout the relevant time period,
25 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFFS and
26 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
27 this failure, PLAINTIFFS and all Aggrieved Employees would have used their paid sick leave at
28 least prior to their respective separations, for as on several occasions thereafter, he or she would

1 have been entitled to use the banked sick leave and earn appropriate compensation.

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

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

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

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

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

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

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

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

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

8 125. For example, DEFENDANTS failed to provide PLAINTIFF MARTINEZ with
9 suitable seating and when PLAINTIFF MARTINEZ was not engaged in duties which required her
10 to stand, no suitable seating was placed in reasonable proximity to PLAINTIFF MARTINEZ's
11 workstation.

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

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

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

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

8 130. For example, DEFENDANTS failed to furnish PLAINTIFF BATES with any final
9 paycheck for at least approximately one (1) week following the separation of PLAINTIFF's
10 employment, and PLAINTIFF BATES' late final paycheck was devoid of all wages owed, including
11 but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all
12 owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited
13 to, all owed vacation pay/paid time off paid at the final rate including non-discretionary
14 compensation, including but not limited to, any shift differential pay).

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

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

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

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

4 134. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

5 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

16 137. Based on information and belief, DEFENDANTS required Aggrieved Employees to
17 sign meal period waivers that were universally signed as a condition of employment, including but
18 not limited to, during the onboarding process. By requiring Aggrieved Employees to sign unlawful
19 meal period waivers as a condition of obtaining and/or maintaining employment, DEFENDANTS
20 violated Labor Code section 432.5. Further, these invalid waivers are otherwise unlawful under
21 Labor Code section 432.6.

22 138. Moreover, based on information and belief, DEFENDANTS ordered unlawful
23 financial credit checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and
24 required Aggrieved Employees to provide ongoing written consent to the unlawful credit checks as
25 a condition of employment, in violation of California and Federal law, which results in a further
26 violation of Labor Code section 432.5.

27 139. Based on information and belief, DEFENDANTS also required Aggrieved
28 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as

1 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
2 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
3 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
4 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
5 FCRA when conducting background screenings for applicants, including but not limited to
6 Aggrieved Employees that were subject to a background check as a condition of employment during
7 the application phase.

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

18 141. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
19 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
20 section 432.5.

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

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

1 144. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
2 condition of employment, DEFENDANTS violated Labor Code section 432.5.

3 Unlawful Inquires into Criminal History

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

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

13 Unlawful PAGA Waiver

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

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

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

28 150. Upon information and belief, DEFENDANTS required Aggrieved Employees to

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

5 151. PLAINTIFFS are informed and believe and allege thereon that DEFENDANTS
6 engaged in these same herein described unlawful practices, which led to violations of the California
7 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
8 unlawful practices to all of its employees that it applied to PLAINTIFFS.

9
10 **FIRST CAUSE OF ACTION**
11 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
12 **2698, *ET SEQ.***
13 **(On behalf of PLAINTIFFS, Aggrieved Employees and the State of California against all**
14 **Defendants)**

15 152. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

16 **Failure to Keep Accurate Records**

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

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

26 155. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
27 PLAINTIFFS and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
28 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

1 period during which the referenced statutes and Wage Order provisions were violated.²

2 **Meal Period Violations**

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

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

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

19 159. Employers must pay employees an additional hour of wages at the employees’
20 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
21 meal period, first meal period provided after five (5) hours, second meal period provided after 10
22 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to
23 provide an employee a meal period in accordance with the applicable provision of this Order, the
24 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation

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

1 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

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

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

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

14 163. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS had
15 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
16 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
17 violation of California's meal period laws.

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

23 165. These unlawful meal period policies and practices result in violations of Labor Code
24 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
25 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
26 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
27 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

1 **Rest Period Violations**

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

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

26 168. PLAINTIFFS and the Aggrieved Employees did not receive legally compliant,
27 timely 10-minute rest periods for every four (4) hours worked or major fraction thereof. As
28 explained above, any purported rest periods were late, interrupted, cut short, on duty, and/or

1 otherwise subject to DEFENDANTS' control due to the nature and constraints of Aggrieved
2 Employees' job duties, understaffing, and/or commentary from supervisors pressuring
3 PLAINTIFFS and Aggrieved Employees to skip rest periods completely or otherwise take non-
4 compliant rest periods.

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

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

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

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

21 **Failure to Provide Suitable Resting Facilities**

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

26 174. DEFENDANTS' locations/facilities are generally similar in layout and design, and
27 there was, and continues to be, space that allows for a resting facility that employees may use to
28 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved

1 Employees with a resting facility within DEFENDANTS' facilities/locations with reasonable or no
2 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a
3 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to
4 resting, including but not limited to leaning up against the wall, or search for facilities outside of
5 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
6 vehicles.

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

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

12 **Minimum and Overtime Wage Violations**

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

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

26 179. As explained above, DEFENDANTS violated California's minimum and overtime
27 wage laws by failing to compensate PLAINTIFFS and the Aggrieved Employees for all hours
28 worked by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for

1 shift start and end times and meal period start and end times), payment according to scheduled hours
2 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during
3 meal periods, and/or other otherwise off-the-clock work (described above), and/or other unlawful
4 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

5 180. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFFS
6 and Aggrieved Employees for all hours worked.

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

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

17 183. Based on information and belief, DEFENDANTS further violated California's
18 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
19 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
20 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
21 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
22 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFFS and
23 other Aggrieved Employees.

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

28 185.

1 **Statutory Wage Violations**

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

13 **Refusal to Make Payment**

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

22 **Standard Conditions of Labor Violations**

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

6 **Business Expense Violations**

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

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

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

25 192. As described above, PLAINTIFFS and the Aggrieved Employees were improperly
26 required to pay for business expenses that are legally the responsibility of the employer.

27 193. DEFENDANTS’ failure to provide PLAINTIFFS and the Aggrieved Employees
28 with full reimbursement for all reasonable expenses associated with carrying out their duties

1 required that PLAINTIFFS and the Aggrieved Employees subsidize and/or carry the burden of
2 business expenses in violation of Labor Code section 2802.

3 194. As a result of DEFENDANTS' unlawful conduct, PLAINTIFFS and other Aggrieved
4 Employees have suffered injury in that they were not completely reimbursed as mandated by
5 California law.

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

10 196. As a result of DEFENDANTS' unlawful conduct, PLAINTIFFS and the Aggrieved
11 Employees have suffered injury in that they were not completely reimbursed as mandated by
12 California law.

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

17 **Wage Statement Violations**

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

27 199. As DEFENDANTS failed to provide PLAINTIFFS and other Aggrieved Employees
28 with meal and rest periods that complied with Labor Code section 226.7, the wage statements

1 DEFENDANTS issued to PLAINTIFFS and other Aggrieved Employees failed and continue to fail
2 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
3 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
4 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
5 effect during the pay period and the corresponding number of hours worked at each hourly rate by
6 the employee, in violation of Labor Code section 226(a)(9).

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

17 201. As explained above, wage statements issued by DEFENDANTS failed to list the
18 "total hours worked" by PLAINTIFFS and Aggrieved Employees (by virtue of rounded time entries,
19 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
20 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
21 described above), which results in a violation of Labor Code section 226(a).

22 202. Separately, and independent of the above allegations, based on information and
23 belief, DEFENDANTS issued wage statements to Aggrieved Employees that failed to list the total
24 hours worked during the pay period, in violation of, including but not limited to, Labor Code section
25 226(a)(2).

26 203. Failure to list all hours worked on a wage statement, gives rise to an inference of
27 injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th
28 1308, 1337).

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

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

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

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

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

1 209. DEFENDANTS' failure to accurately list all hours worked on all wage statements
2 caused confusion to PLAINTIFFS and caused and continues to cause confusion to other Aggrieved
3 Employees over whether they received all wages owed to them.

4 210. As a result, PLAINTIFFS and other Aggrieved Employees have suffered injury as
5 they could not easily determine whether they received all wages owed to them and whether they
6 were paid for all hours worked.

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

11 212. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFFS and
12 Aggrieved Employees with accurate, itemized wage statements.

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

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

25 **Unlawful Deductions**

26 215. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
27 an employee any part of wages theretofore paid by said employer to said employee." Based on

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

1 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
2 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
3 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
4 Section 2699.

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

11 **Reporting Time Pay Violations.**

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

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

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

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

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

3 **Violation of California Day of Rest Law.**

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

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

14 **Seating Violations**

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

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

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

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

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

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

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

9 228. The Aggrieved Employees worked in various positions. The nature of Aggrieved
10 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
11 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
12 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
13 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
14 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
15 separate civil penalty.

16 **Sick Leave Violations**

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

24 230. DEFENDANTS further failed to give PLAINTIFFS and other Aggrieved Employees
25 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
26 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
27 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFFS
28 and Aggrieved Employees' intelligent exercise of their paid sick leave.

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

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

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

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

15 235. On information and belief, PLAINTIFFS allege that all of these practices were
16 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

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

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

13 **Untimely Payment of Final Wages**

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

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

27 242. Based on information and belief, DEFENDANTS failed and continue to fail to timely
28 pay final wages to Aggrieved Employees upon separation of employment in violation of Labor Code

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

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

8 **Violation of Labor Code Section 208**

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

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

18 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

27 247. Labor Code section 432.6(a), provides that “a person shall not, as a condition of
28 employment, continued employment, or the receipt of any employment-related benefit, require any

1 applicant for employment or any employee to waive any right...”

2 248. Based on information and belief, DEFENDANTS required Aggrieved Employees to
3 sign meal period waivers that were universally signed as a condition of employment, including but
4 not limited to, during the onboarding process. By requiring Aggrieved Employees to sign unlawful
5 meal period waivers as a condition of obtaining and/or maintaining employment, DEFENDANTS
6 violated Labor Code section 432.5. Further, these invalid waivers are otherwise unlawful under
7 Labor Code section 432.6.

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

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

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

27 252. Based on further information and belief, DEFENDANTS required Aggrieved
28 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct

1 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
2 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
3 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

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

9 Unlawful Inquires into Criminal History

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

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

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

24 Unlawful PAGA Waiver

25 258. 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.

28 259. 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.")

6 260. 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.'")

11 261. 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.

16 262. Under the provisions of PAGA and the above mentioned Labor Code sections,
17 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
18 226.7, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1194,
19 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as
20 well as all interpretations of these laws by California Courts and administrative bodies, as well as
21 any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
22 penalties:

- 23 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
24 relevant California Labor Code provisions listed herein only if permitted by the
25 PAGA statute, pursuant to Labor Code section 2699(a); and
- 26 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
27 violations without a civil penalty recoverable under the PAGA, all in the default
28 amounts provided by Labor Code section 2699(f).

1 c. The proper measure of penalties under PAGA is the number of violations,
2 whether those violations were committed as against PLAINTIFFS or any
3 Aggrieved Employee, whether a party to this action or not.

4 263. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
5 PLAINTIFFS are entitled to recover civil penalties, costs, and attorney's fees.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for relief and judgment as follows on behalf of PLAINTIFFS, 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 25, 2024

CROSNER LEGAL, PC

By: 
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiffs
MIRIAM MARTINEZ and
LA MANTA BATES