

1 BRANDON BROUILLETTE, ESQ. (SBN 273156)

2 bbrouillette@crosnerlegal.com

3 KAREN L. WALLACE, ESQ (SBN 272309)

4 karen@crosnerlegal.com

5 ZACHARY M. CROSNER, ESQ. (SBN 272295)

6 zach@crosnerlegal.com

7 **CROSNER LEGAL, PC**

8 9440 Santa Monica Blvd. Suite 301

9 Beverly Hills, CA 90210

10 Tel: (866) 276-7637

11 Fax: (310) 510-6429

12 Attorneys for Plaintiff ROBERT MARTINEZ

13 on behalf of the State of California and all Aggrieved Employees

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF SAN DIEGO**

16 ROBERT MARTINEZ, on behalf of the State
17 of California and all Aggrieved Employees,

18 Plaintiff,

19 v.

20 IHG MANAGEMENT (MARYLAND)
21 LLC, a Maryland Limited Liability
22 Company; INTER-CONTINENTAL
23 HOTELS CORPORATION, a Delaware
24 Corporation; INTERCONTINENTAL
25 HOTELS GROUP RESOURCES, LLC, a
26 Delaware Limited Liability Company; and
27 DOES 1-100, inclusive,

28 Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

02/23/2024 at 01:46:05 PM

Clerk of the Superior Court
By Eva Noriega, Deputy Clerk

Case No.: 37-2024-00008504-CU-OE-CTL

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

1 Plaintiff, ROBERT MARTINEZ, (“PLAINTIFF”), on behalf of the State of California and
2 all Aggrieved Employees (as defined below, hereby files this Complaint against Defendants IHG
3 MANAGEMENT (MARYLAND) LLC, a Maryland Limited Liability Company; INTER-
4 CONTINENTAL HOTELS CORPORATION, a Delaware Corporation; INTERCONTINENTAL
5 HOTELS GROUP RESOURCES, LLC, a Delaware Limited Liability Company; and DOES 1-100,
6 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
7 believes and thereon alleges as follows:

8 **INTRODUCTION**

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

14 **JURISDICTION AND VENUE**

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

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

25 **THE PARTIES**

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

28 5. PLAINTIFF worked for DEFENDANTS as a server and/or similar title(s) and/or job
2
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 position(s) from in or around April 2022 through in or around April 2023, and then PLAINTIFF
2 worked for DEFENDANTS as a non-exempt supervisor and/or similar job title(s) and/or position(s)
3 from in or around April 2023 through on or around October 1, 2023.

4 6. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' San Diego, California
5 location(s). DEFENDANTS assigned PLAINTIFF to work at DEFENDANTS' facilities located in
6 San Diego, California, including but not limited to, at DEFENDANTS' restaurants and/or bars
7 and/or other facilities located within one of DEFENDANTS' hotel(s) and/or resort(s) in San Diego,
8 California.

9 7. Defendant IHG MANAGEMENT (MARYLAND) LLC is a Maryland Limited
10 Liability Company that, at all relevant times, was authorized to do business within the State of
11 California and is doing business in the State of California.

12 8. Defendant INTER-CONTINENTAL HOTELS CORPORATION is a Delaware
13 Corporation that, at all relevant times, was authorized to do business within the State of California
14 and is doing business in the State of California.

15 9. Defendant INTERCONTINENTAL HOTELS GROUP RESOURCES, LLC is a
16 Delaware Limited Liability Company that, at all relevant times, was authorized to do business within
17 the State of California and is doing business in the State of California.

18 10. DEFENDANTS own, operate, manage and/or staff its employees to work at the
19 hotels, resorts, restaurants and/or other facilities and/or other location(s) in California, including but
20 not limited to, hotels and/or resorts and/or restaurants and/or other facilities located in San Diego,
21 California. Based on information and belief, IHG operates multiple hotels, resorts and/or other
22 facilities including but not limited to, hotels and/or resorts operating under at least nineteen (19)
23 brand names, including but not limited to, hotels and/or resorts operating under the brand name(s)
24 "Intercontinental" and/or "Intercontinental Hotels & Resorts". DEFENDANTS, through its various
25 locations, serve the hospitality industry.¹

26 11. The true names and capacities of the DOE Defendants sued herein as DOES 1
27

28 ¹ See <https://www.ihg.com/content/us/en/about/brands>. Last visited on February 23, 2024.

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

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

16 **JOINT LIABILITY**

17 13. Under California law, the definition of the terms “to employ” are broadly construed
18 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
19 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
20 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
21 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
22 was to reach situations in which multiple entities control different aspects of the employment
23 relationship. Supervision of the work, in the specific sense of exercising control over how services
24 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
25 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
26 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
27 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
28 California, applying a less stringent standard to what constitutes sufficient control by a business

1 over its vendor's employees' wages and working conditions to render that business liable as a joint
2 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); "[i]f the putative
3 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
4 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
5 employment," *Id.* at 875 [emphasis added].

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

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

26 16. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
27 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
28 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that

1 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
2 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
3 considered the joint employers of PLAINTIFF and Aggrieved Employees.

4 17. For example, DEFENDANTS, and each of them, maintain the same agent for service
5 of process and principal business office as provided to the California Secretary of State and based
6 on information and belief, maintain some of the same attorneys and/or human resources personnel
7 to oversee employment related matters.

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

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

27 20. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
28 control over, applied the same policies and practices, and engaged in the same acts and omissions

1 with regard to the other Aggrieved Employees.

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

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

11 **PAGA ALLEGATIONS**

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

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

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

1 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
2 *Id.* at 760-761.

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

4 25. PLAINTIFF, on December 15, 2023, through counsel, gave written notice by online
5 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
6 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
7 in this Complaint (“PAGA Notice”).

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

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

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

19 **FACTUAL ALLEGATIONS**

20 29. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
21 worked for DEFENDANTS in the State of California. At all times referenced herein,
22 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
23 permitted them to work.

24 30. PLAINTIFF worked for DEFENDANTS as a server and/or similar title(s) and/or job
25 position(s) from in or around April 2022 through in or around April 2023, and then PLAINTIFF
26 worked for DEFENDANTS as a non-exempt supervisor and/or similar job title(s) and/or position(s)
27 from in or around April 2023 through on or around October 1, 2023.

28 31. PLAINTIFF worked for DEFENDANTS at DEFENDANTS’ San Diego, California

1 location(s). DEFENDANTS assigned PLAINTIFF to work at DEFENDANTS' facilities located in
2 San Diego, California, including but not limited to, at DEFENDANTS' restaurants and/or bars
3 and/or other facilities located within one of DEFENDANTS' hotel(s) and/or resort(s) in San Diego,
4 California.

5 32. PLAINTIFF regularly worked at least ten (10) hours per day when working for
6 DEFENDANTS as a server and/or similar title(s) and/or position(s), and at least eight (8) to sixteen
7 (16) hours per day hours when working as a non-exempt supervisor and/or similar title(s) and/or
8 position(s). PLAINTIFF regularly worked at least five (5) days per week.

9 33. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
10 hourly basis for time counted by DEFENDANTS as hours worked.

11 34. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
12 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
13 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
14 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
15 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
16 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
17 below.

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

24 36. Based on information and belief, Aggrieved Employees were not paid for all hours
25 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
26 worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

27 37. For example, as explained below, based on information and belief, DEFENDANTS
28 would unlawfully edit the clock in and out times for PLAINTIFF's and other Aggrieved Employees'

1 meal periods in order to display at least a thirty minute off-duty meal period during most if not all
2 shifts worked, notwithstanding the fact that DEFENDANTS had actual and/or constructive
3 knowledge that DEFENDANTS had required PLAINTIFF and other Aggrieved Employees' to
4 perform work-related tasks during their meal periods.

5 38. Based on information and belief, DEFENDANTS required Aggrieved Employees to
6 be at their assigned workstations at the start of a scheduled shift, thereby forcing Aggrieved
7 Employees to gather work-related equipment and/or safety gear, make any necessary adjustments
8 to tools/equipment and/or perform maintenance/cleaning tasks, don work clothing/uniforms and/or
9 protective equipment, and/or complete other work tasks prior to their scheduled shift and/or prior to
10 clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

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

15 40. For example, based on information and belief, DEFENDANTS required Aggrieved
16 Employees to clock out for the end of their shifts but to continue working due to the need to
17 return/maintain tools, clean and/or organize their work stations/areas, provide shift status updates
18 and/or debriefings and/or participate in work meetings, respond to work-related communications
19 and/or perform other work tasks off-the-clock, resulting in the underpayment of minimum wages
20 and overtime wages owed to Aggrieved Employees.

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

26 42. Based on information and belief, at times, Aggrieved Employees were required to
27 complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or
28 messages they received to their phones/mobile devices and were required to respond to, including

1 but not limited to, communications from supervisors regarding scheduling and/or other work tasks,
2 resulting in the underpayment of wages owed to Aggrieved Employees.

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

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

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

24 46. Based on information and belief, at times, DEFENDANTS require/required
25 Aggrieved Employees to travel around and/or between DEFENDANTS' restaurants, hotels, offices,
26 facilities and/or locations without compensating Aggrieved Employees for the travel time.

27 47. For example, based on information and belief, due to scheduling issues and/or
28 understaffing, Aggrieved Employees were at times required after working at their scheduled facility

1 location to cover a shift at another of DEFENDANTS' restaurants/facilities/locations but were not
2 compensated for the time spent driving to the second restaurant/facility, resulting in the
3 underpayment of minimum and overtime wages owed to Aggrieved Employees. Based on
4 information and belief, DEFENDANTS failed to compensate Aggrieved Employees for all time
5 spent completing DEFENDANTS' required trainings and/or courses (e.g., food safety and/or food
6 handler courses) and/or testings and/or certifications (e.g., food handler certifications).

7 48. Based on information and belief, DEFENDANTS failed to pay Aggrieved
8 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
9 Member worked in California.

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

1 and/or other Aggrieved Employees on their wage statements.

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

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

12 52. 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 PLAINTIFF 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 53. 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 owed to PLAINTIFF and other Aggrieved Employees, in
22 violation of California's minimum and overtime wage laws.

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

26 55. Based on information and belief, DEFENDANTS failed and continue to fail to pay
27 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours
28 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in

1 a work week, in violation of California's overtime laws.

2 56. Based on information and belief, DEFENDANTS calculated the owed overtime
3 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
4 based on the minimum wage established for the cities and/or counties within which Aggrieved
5 Employees worked, resulting in the miscalculation and underpayment of overtime wages owed to
6 Aggrieved Employees who worked in cities and/or counties in California with minimum wage rates
7 above the California minimum wage rate.

8 57. Based on information and belief, DEFENDANTS failed to incorporate all non-
9 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
10 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
11 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
12 Aggrieved Employees.

13 58. For example, based on information and belief, Aggrieved Employees earned shift
14 differential pay, non-discretionary bonuses/incentive pay and/or other non-discretionary
15 compensation during pay periods in which they worked overtime, yet DEFENDANTS failed to
16 incorporate all non-discretionary compensation into the regular rate(s) used to calculate the owed
17 overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to
18 Aggrieved Employees.

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

28 60. For example, based on information and belief, Aggrieved Employees were forced to

1 take late meal periods in order to complete assigned job duties. Based on information and belief,
2 Aggrieved Employees were at times interrupted during purported meal periods and/or had meal
3 periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned
4 job duties.

5 61. For example, when working for DEFENDANTS as a server and/or similar title(s)
6 and/or position(s), PLAINTIFF was required to sometimes take his meal periods late and/or take
7 shortened and/or interrupted meal periods and/or work through his meal periods completely.

8 62. When working for DEFENDANTS as a non-exempt supervisor and/or similar title(s)
9 and/or position(s), PLAINTIFF was forced to work through his first meal periods during
10 approximately at least half of his shifts due to understaffing and/or lack of relief workers.

11 63. For example, at times, PLAINTIFF worked shifts lasting at least sixteen (16) hours
12 long without receiving any meal periods during those shifts.

13 64. Also, per DEFENDANTS' unlawful meal period policies and practices,
14 DEFENDANTS failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
15 DEFENDANTS' control during unpaid meal periods by including but not limited to, restricting
16 PLAINTIFF and other Aggrieved Employees to the worksite premises during purportedly off-duty
17 meal periods, resulting in denied meal periods as well as DEFENDANTS' failure to compensate
18 PLAINTIFF and other Aggrieved Employees for all hours worked.

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

24 66. Based on information and belief, DEFENDANTS implemented policies and/or
25 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
26 during unpaid meal periods.

27 67. Based on information and belief, DEFENDANTS required Aggrieved Employees to
28 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take

1 into account when scheduling meal periods for Aggrieved Employees. Based on information and
2 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

3 68. Based on information and belief, despite DEFENDANTS' failure to provide lawful
4 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
5 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
6 deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite
7 having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees did
8 not receive lawful meal periods.

9 69. Moreover, per DEFENDANTS' uniform policy and practice, Aggrieved Employees
10 who worked shifts of more than ten hours did not receive a second legally compliant thirty (30)
11 minute second meal period.

12 70. For example, when PLAINTIFF worked shifts lasting longer than ten (10) and/or
13 twelve (12) hours, PLAINTIFF was not provided with any second meal period.

14 71. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
15 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
16 information and belief, DEFENDANTS did not have a written meal period policy, nor did
17 DEFENDANTS have any sort of compliant policy in practice.

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

24 73. Based on information and belief, DEFENDANTS had actual and/or constructive
25 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
26 were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
27 violation of California's meal period laws.

28 74. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an

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

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

11 **76.** PLAINTIFF and other Aggrieved Employees were not adequately informed,
12 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
13 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
14 the taking of duty-free rest periods.

15 **77.** Based on information and belief, DEFENDANTS did not have a have a compliant
16 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
17 practice.

18 **78.** For example, based on information and belief, Aggrieved Employees were unable to
19 take compliant rest periods due to their need to complete assigned job duties and/or were unable to
20 take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted
21 to DEFENDANTS' premises.

22 **79.** Based on information and belief, Aggrieved Employees' rest periods were
23 interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and
24 constraints of their job duties, and/or due to commentary from supervisors/managers pressuring
25 them to skip rest periods completely or otherwise take non-compliant rest periods.

26 **80.** Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
27 lasting longer than ten hours.

28 **81.** Based on information and belief, DEFENDANTS implemented policies and/or

1 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
2 DEFENDANTS' control during rest periods.

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

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

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

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

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

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

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

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

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

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

22 91. As described herein, based on information and belief, DEFENDANTS also failed to
23 incorporate all forms of non-discretionary compensation earned during the pay period into the
24 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
25 of overtime worked by PLAINTIFF and other Aggrieved Employees.

26 92. Based on information and belief, wage statements issued by DEFENDANTS failed
27 to list the inclusive dates of the pay period for which the Aggrieved Member is being paid.

28 93. For example, based on information and belief, wage statements issued by

1 DEFENDANTS failed to list the inclusive dates of the pay period for which the Aggrieved
2 Employee is being paid. For example, based on information and belief, at times, DEFENDANTS
3 issued wage statements to Aggrieved Employees containing payment for hours worked during
4 previous pay periods, yet DEFENDANTS' wage statements do not include the inclusive dates of
5 the accurate pay period for that retroactive pay, further failing to list the total hours worked for the
6 pay period, including but not limited to, the total hours worked for the pay period the retroactive
7 pay corresponds with.

8 94. For example, based on information and belief, at times, DEFENDANTS issued wage
9 statement(s) to Aggrieved Employees that list a category for "Retro" pay without including the
10 inclusive dates of the accurate pay period for that "Retro" pay, further failing to list the total hours
11 worked for the pay period, including but not limited to, the total hours worked for the pay period
12 the retroactive pay corresponds with, in violation of including but not limited to, Labor Code section
13 226(a)(2) and/or Labor Code section 226(a)(6).

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

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

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

26 98. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
27 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
28 to said employee." Based on information and belief DEFENDANTS made unlawful deductions

1 from Aggrieved Employees paychecks during the relevant period including but not limited to,
2 deducting costs of uniforms and/or other business costs and/or deducting wages for purported
3 overpayments from previous pay periods and/or unlawfully deducting wages for negligently
4 damaged property. Such a practice is in violation of including but not limited to, Labor Code
5 Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

14 100. DEFENDANTS have failed and continue to fail to keep accurate and complete
15 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
16 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
17 employer control during unpaid meal periods, failure to record the true start and end times of meal
18 periods, shift start times and shift end times, and other off-the-clock work policies and practices
19 described herein.

20 101. **Unreimbursed Business Expenses.** Based on information and belief,
21 DEFENDANTS required PLAINTIFF and Aggrieved Employees to incur business expenses as a
22 direct consequence of the performance of their job duties without providing reimbursement, in
23 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and Aggrieved
24 Employees were improperly required to provide and maintain work tools that are supposed to be the
25 responsibility of the employer.

26 102. Based on information and belief, DEFENDANTS shifted the costs of doing business
27 onto PLAINTIFF and other Aggrieved Employees requiring them to pay for business expenses
28 including but not limited to, uniforms/work clothing/work shoes, personal protective/safety gear

1 and/or the use of Aggrieved Employees' personal mobile phone and data usage for work-related
2 purposes including but not limited to receiving and responding to work-related messages and/or
3 phone calls.

4 103. For example, on information and belief, Aggrieved Employees received
5 calls/messages to their personal cell phones/mobile devices from supervisors and/or other
6 Aggrieved Employees regarding scheduling and/or other work tasks but were not provided any
7 and/or full reimbursement from DEFENDANTS for these business expenses incurred as a result of
8 being required to use their personal cell phone(s)/mobile device(s) to carry out their assigned job
9 duties.

10 104. For example, PLAINTIFF was required to use his personal cell phone/mobile device
11 for work, including but not limited to, to make and/or receive work-related calls and/or messages.
12 For example, oftentimes PLAINTIFF's supervisor(s) called PLAINTIFF on PLAINTIFF's personal
13 mobile device including but not limited to, during work hours. DEFENDANTS did not provide
14 PLAINTIFF with any and/or full reimbursement for the business expenses PLAINTIFF incurred in
15 connection with being required to use his personal cell phone/mobile device to carry out his assigned
16 job duties, including without limitation, expenses associated with increased data plan charges.
17 Based on information and belief, Aggrieved Employees were not reimbursed for the cost of using
18 their personal phone for work-related purposes and/or the cost of purchasing and/or maintaining
19 work uniforms/work clothing/work shoes, personal protective/safety gear.

20 105. For example, based on information and belief, Aggrieved Employees were not
21 reimbursed for the costs of purchasing and/or maintaining work uniforms/work clothing/work shoes,
22 personal protective/safety gear, such as, but not limited to, face masks, gloves, hairnets and/or work
23 shoes. Based on information and belief, at times, DEFENDANTS required Aggrieved Employees
24 to use their personal vehicles for work without reimbursing them for the personal vehicle expenses
25 they incurred in connection therewith.

26 106. For example, based on information and belief, at times, DEFENDANTS required
27 Aggrieved Employees to travel from one of DEFENDANTS' hotels/resorts/facilities/restaurants to
28 a second of DEFENDANTS' hotels/resorts/facilities/restaurants for work and/or otherwise required

1 Aggrieved Employees to use their personal vehicles to carry out their assigned job duties without
2 reimbursing Aggrieved Employees for the expenses incurred in connection with DEFENDANTS'
3 business use of their personal vehicles.

4 107. As such, DEFENDANTS failed to reimburse Aggrieved Employees at the legally
5 mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant
6 period.

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

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

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

20 111. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
21 provides as follows:

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

1 minimum wage.

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

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

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

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

22 117. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
23 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
24 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the
25 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
26 accrued sick leave hours on the correct number of hours worked (as a result of the
27 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
28 times/other required off-the-clock work including but not limited to unpaid meal periods) and by

1 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
2 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
3 compensation into the sick leave pay rate calculation.

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

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

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

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

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

1 to be seated.

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

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

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

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

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

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

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

27 128. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
28 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its

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

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

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

17 131. **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.

24 132. **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.

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

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

17 135. These violations subject DEFENDANTS to civil penalties under Labor Code section
18 203, 210, and/or 256.

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

27 137. **Violation of Labor Code Sections 351 and 353.** Labor Code Section 351 prohibits
28 employers and their agents from sharing in or keeping any portion of a gratuity left for or given to

1 one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions
2 from gratuities, or from using gratuities as direct or indirect credits against an employee's
3 wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities
4 received.

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

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

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

23 **141. Unlawful Agreements-Unlawful Criminal History Inquiries.**

24 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

25 142. Based on information and belief, DEFENDANTS required Aggrieved Employees to
26 agree in writing to unlawful conditions of employment including but not limited to unlawful non-
27 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements,
28 unlawful releases and/or waivers, including but not limited to, unlawful meal period waivers,

1 unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful
2 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
3 violation of Labor Code section 432.5.

4 143. Labor Code section 432.6(a), provides that “a person shall not, as a condition of
5 employment, continued employment, or the receipt of any employment-related benefit, require any
6 applicant for employment or any employee to waive any right...”Based on information and belief,
7 DEFENDANTS required Aggrieved Employees to sign meal period waivers that were universally
8 signed as a condition of employment, including but not limited to, during the onboarding process.
9 By requiring Aggrieved Employees to sign unlawful meal period waivers as a condition of obtaining
10 and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these
11 invalid waivers are otherwise unlawful under Labor Code section 432.6. unlawful criminal and/or
12 financial checks as a condition of obtaining and/or continuing employment in violation of Labor
13 Code section 432.5.

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

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

28 146. Based on information and belief, DEFENDANTS required Aggrieved Employees to
30
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
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1 agree in writing to a background check which failed to abide by the requirements set forth in CA
2 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
3 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
4 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
5 the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,
6 failing to provide a way by which the individual could request a copy of the report, failing to disclose
7 the name, address, and telephone number of the third party preparing the report, and failing to
8 properly obtain authorization or consent to such a background check, and thus was an unlawful
9 background check.

10 147. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
11 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
12 section 432.5.

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

18 149. Based on further information and belief, DEFENDANTS knew that requiring
19 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
20 condition of obtaining and/or holding employment was unlawful.

21 150. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
22 condition of employment, DEFENDANTS violated Labor Code section 432.5.

23 Unlawful Inquires into Criminal History

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

28 152. Upon information and belief, DEFENDANTS, in violation of California law,
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PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
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1 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
2 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
3 employment and/or otherwise impermissibly inquired into criminal history on its employment
4 application in violation of California law, and in violation of Labor code section 432.5.

5 Unlawful PAGA Waiver

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

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

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

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

25 157. **Violation of Labor Code Section 432.6.** Based on information and belief,
26 DEFENDANTS require/required Aggrieved Employees to waive their right to first and/or second
27 meal periods as a condition of working for DEFENDANTS in violation of California law. As such,
28 DEFENDANTS violated including but not limited to, Labor Code section 432.6 by virtue of

1 including but not limited to, requiring Aggrieved Employees to sign invalid meal period waivers as
2 a condition of employment and/or for threatening, retaliating and/or discriminating against and/or
3 terminating Aggrieved Employees because of their refusal to waive their meal period rights.

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

8 **FIRST CAUSE OF ACTION**
9 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
10 **2698, *ET SEQ.***

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

13 159. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

14 **Failure to Keep Accurate Records**

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

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

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

3 163. 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.

8 164. 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.*

11 165. 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”).

19 166. 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.

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

8 168. 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 PLAINTIFF and
11 Aggrieved Employees did not receive compliant meal periods.

12 169. 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.

14 170. PLAINTIFF is informed and believes and thereon alleges 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.

18 171. 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.

23 172. 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.

28 **Rest Period Violations**

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

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

25 175. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
26 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
27 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
28 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,

1 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
2 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

19 **Failure to Provide Suitable Resting Facilities**

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

24 181. DEFENDANTS’ locations/facilities are generally similar in layout and design, and
25 there was, and continues to be, space that allows for a resting facility that employees may use to
26 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
27 Employees with a resting facility within DEFENDANTS’ facilities/locations with reasonable or no
28 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a

1 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to
2 resting, including but not limited to leaning up against the wall, or search for facilities outside of
3 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
4 vehicles.

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

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

10 **Minimum and Overtime Wage Violations**

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

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

24 186. As explained above, DEFENDANTS violated California's minimum and overtime
25 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
26 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
27 start and end times and meal period start and end times), payment according to scheduled hours
28 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during

1 meal periods, and/or other otherwise off-the-clock work (described above), and/or other unlawful
2 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

3 187. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
4 Aggrieved Employees for all hours worked.

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

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

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

22 191. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
23 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
24 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
25 Wage Orders, section 20.

26 **Statutory Wage Violations**

27 192. California Labor Code section 223 makes it unlawful for an employer to secretly pay
28 wages lower than required by statute while purporting to pay legal wages. As described above,

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

10 **Refusal to Make Payment**

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

19 **Standard Conditions of Labor Violations**

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

3 **Business Expense Violations**

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

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

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

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

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

28 200. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved

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

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

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

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

14 **Wage Statement Violations**

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

24 205. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
25 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
26 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
27 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
28 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net

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

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

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

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

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

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

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

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

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

12 214. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and
13 Aggrieved Employees with accurate, itemized wage statements.

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

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

26 **Unlawful Deductions**

27 217. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
28

⁴ Labor Code § 226.3 (establishing that the civil penalty is ~~4~~¹ per employee per violation").

1 an employee any part of wages theretofore paid by said employer to said employee.” Based on
2 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
3 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
4 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
5 Section 2699.

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

12 **Reporting Time Pay Violations**

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

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

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

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

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

5 **Violation of California Day of Rest Law**

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

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

16 **Seating Violations**

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

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

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

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

27 227. Suitable seating is one of the worker protections covered by California's Wage
28 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly

1 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
2 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

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

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

19 **Violation of Labor Code Sections 351 and 353**

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

25 232. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
26 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
27 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
28 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep

1 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
2 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
3 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
4 Labor Code section 351.

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

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

15 **Sick Leave Violations**

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

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

28 237. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
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PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
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1 their paid sick leave at least prior to their respective separations, for as on several occasions
2 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
3 compensation.

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

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

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

14 241. On information and belief, PLAINTIFF alleges that all of these practices were
15 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

26 244. Based on information and belief, DEFENDANTS had and continue to have a
27 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
28 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off

1 to Aggrieved Employees upon separation of employment, in violation of California law, including
2 but not limited to, Labor Code section 227.3.

3 **Untimely Payment of Final Wages**

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

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

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

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

26 **Violation of Labor Code Section 208**

27 249. Labor Code Section 208 provides: Every employee who is discharged shall be paid
28 at the place of discharge, and every employee who quits shall be paid at the office or agency of the

1 employer in the county where the employee has been performing labor. All payments shall be made
2 in the manner provided by law.

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

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

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

14 252. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
15 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
16 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
17 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
18 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
19 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
20 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
21 Labor Code section 351.

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

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

4 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

25 257. Moreover, based California Labor Code places certain procedural and substantive
26 limits on an employers’ ability to conduct employee background checks and on how employers can
27 use the information they obtain through those background checks. Labor Code section 1024.5 states
28 that employers, except for financial institutions, may order a credit check only if the individual

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

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

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

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

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

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

26 Unlawful Inquires into Criminal History

27 263. Labor Code section 432.7 prohibits an employer from asking applicants about past
28 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on

1 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
2 convictions on its employment application, in violation of California law.

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

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

13 Unlawful PAGA Waiver

14 266. 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.

17 267. 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.”)

23 268. 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.’”)

28 269. 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 **Violation of Labor Code Section 432.6**

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

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

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

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

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

23 275. Under the provisions of PAGA and the above mentioned Labor Code sections,
24 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
25 226.7, 245-248.6, 256, 351, 353, 432, 432.5, 432.6, 432.7, 510, 512, 551, 552, 558, 558.1, 1174,
26 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable
27 Wage Orders as well as all interpretations of these laws by California Courts and administrative
28 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for

1 the following penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: February 23, 2024

CROSNER LEGAL, PC

By: 
Brandon Brouillette, Esq.
Karen L. Wallace, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff
ROBERT MARTINEZ