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7 Attorneys for Plaintiff IRVING MURILLO GARCIA
8 on behalf of the State of California
9 and all Aggrieved Employees

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN FRANCISCO**

12 IRVING MURILLO GARCIA, on behalf of
the State of California and all Aggrieved
13 Employees,

14 Plaintiff,

15 v.

16
17 HOLLYWOOD PARK CASINO
COMPANY, LLC, a California Limited
Liability Company; WM HOLLYWOOD
18 PARK CASINO JV, LLC, a Delaware
Limited Liability Company; HOLLYWOOD
19 PARK CASINO SECURITY COMPANY
LP, a California Limited Partnership; and
20 DOES 1-100, inclusive,

21 Defendants.

Case No.:

CGC-24-612245

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

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

02/08/2024
Clerk of the Court
BY: JAMES FORONDA
Deputy Clerk

1 Plaintiff, IRVING MURILLO GARCIA, (“PLAINTIFF”), on behalf of the State of
2 California and all Aggrieved Employees (as defined below), hereby files this Complaint against
3 Defendants HOLLYWOOD PARK CASINO COMPANY, LLC, a California Limited Liability
4 Company; WM HOLLYWOOD PARK CASINO JV, LLC, a Delaware Limited Liability Company;
5 HOLLYWOOD PARK CASINO SECURITY COMPANY LP, a California Limited Partnership;
6 and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is
7 informed and believes and thereon alleges as follows:

8 **INTRODUCTION**

9 1. This is a representative action filed by PLAINTIFF on behalf of PLAINTIFF, all
10 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California’s
11 Private Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties
12 (75% 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 Francisco pursuant to
18 California Code of Civil Procedure section 395.5 because Defendants HOLLYWOOD PARK
19 CASINO COMPANY, LLC and WM HOLLYWOOD PARK CASINO JV, LLC, maintain their
20 principal place of business in this judicial district, DEFENDANTS transact business within this
21 judicial district and conduct alleged by PLAINTIFF herein occurred in this this judicial district. *See*
22 *also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a
23 PAGA action is proper in any county where the defendants committed Labor Code violations against
24 some of its employees). Venue is also proper pursuant to section 393 of the California Code of Civil
25 Procedure because the cause, or some part of the cause, arose in the County of San Francisco.

26 **THE PARTIES**

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

1 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
2 DEFENDANTS as a non-exempt employee with a job title of kitchen cook and/or a similar title(s)
3 and/or position(s) from on or around October 6, 2023, through on or around November 17, 2023.
4 PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Inglewood, California location(s).

5 6. Defendant HOLLYWOOD PARK CASINO COMPANY, LLC is a California
6 Limited Liability Company that, at all relevant times, was authorized to do business within the State
7 of California and is doing business in the State of California.

8 7. Defendant WM HOLLYWOOD PARK CASINO JV, LLC is a Delaware Limited
9 Liability Company that, at all relevant times, was authorized to do business within the State of
10 California and is doing business in the State of California.

11 8. Defendant HOLLYWOOD PARK CASINO SECURITY COMPANY LP is a
12 California Limited Partnership that, at all relevant times, was authorized to do business within the
13 State of California and is doing business in the State of California.

14 9. DEFENDANTS own, operate, manage and/or staff its employees to work at the card
15 rooms, racetracks, restaurants, lounges, facilities and/or other location(s) in California, including
16 but not limited to the card rooms, racetracks, restaurants, lounges, facilities in Inglewood, California.
17 DEFENDANTS, through its various locations, serve the hospitality industry.¹

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

24 11. PLAINTIFF is further informed and believes that, at all relevant times, each
25 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
26 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
27 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of

28 ¹ See <https://playhpc.com/>. Last visited on February 6, 2024.

1 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
2 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
3 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
4 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
5 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
6 controlled, aided and abetted the conduct of all other Defendants.

7 **JOINT LIABILITY**

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

25 13. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and other
26 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of
27 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
28 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control

1 over wages, hours and working conditions of PLAINTIFF and Aggrieved Employees; (2) suffered
2 or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF
3 and Aggrieved Employees to work for them.

4 14. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
5 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
6 human resources. For example, DEFENDANTS, and each of them, share similar names and/or share
7 the same principal business address/ mailing address and/or agent for service of process as provided
8 to the California Secretary of State and/or DEFENDANTS' principal business address/ mailing
9 address as provided to the California Secretary of State is the address of the work location at which
10 PLAINTIFF was assigned by DEFENDANTS to work during the relevant period.

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

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

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

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

19 19. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
20 control over, applied the same policies and practices, and engaged in the same acts and omissions
21 with regard to the other Aggrieved Employees.

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

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

3 **PAGA ALLEGATIONS**

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

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

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

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

24 24. PLAINTIFF, on December 1, 2023, through counsel, gave written notice by online
25 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
26 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
27 in this Complaint (“PAGA Notice”).

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

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

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

11 **FACTUAL ALLEGATIONS**

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

16 29. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
17 DEFENDANTS as a non-exempt employee with a job title of kitchen cook and/or a similar title(s)
18 and/or position(s) from on or around October 6, 2023, through on or around November 17, 2023.

19 30. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Inglewood, California
20 location(s). PLAINTIFF regularly worked at least eight (8) hours per day, at least five (5) days per
21 week.

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

24 32. Based on information and belief, Aggrieved Employees were also compensated with
25 non-discretionary compensation, including but not limited to, shift differential pay, non-
26 discretionary bonuses/incentive pay and/or other non-discretionary compensation.

27 33. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
28 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of

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

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

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

16 36. For example, based on information and belief, DEFENDANTS required Aggrieved
17 Employees to be at their assigned workstations at the start of a scheduled shift, thereby forcing
18 Aggrieved Employees to perform off-the-clock work tasks, including but not limited to, bestow
19 personal items in employee lockers/storage area, retrieve and/or compile work tools/equipment,
20 make any necessary adjustments to tools/equipment, don work clothing/uniforms and/or protective
21 equipment, gather work-related equipment and/or safety gear, make any necessary adjustments to
22 tools/equipment and/or perform maintenance/cleaning tasks, engage in work-related
23 communications and/or complete other work tasks prior to their scheduled shift and/or prior to
24 clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

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

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

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

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

16 41. Based on information and belief, at times, Aggrieved Employees were required to
17 complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or
18 messages they received to their phones/mobile devices and were required to respond to, including
19 but not limited to, communications from supervisors regarding scheduling and/or other work tasks,
20 resulting in the underpayment of wages owed to Aggrieved Employees. PLAINTIFF and other
21 Aggrieved Employees were required to perform other off-the-clock work for which they were not
22 compensated.

23 42. For example, based on information and belief, at times, DEFENDANTS'
24 biometric/electronic employee time-keeping system malfunctioned such that Aggrieved Employees
25 were required to either reinitiate and/or otherwise troubleshoot the system prior to being able to
26 clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from
27 meal periods, resulting in off-the-clock work and the underpayment of wages owed to Aggrieved
28 Employees. Based on information and belief, Aggrieved Employees experienced the same issues

1 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
2 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
3 Aggrieved Employees.

4 43. Moreover, based on information and belief, Aggrieved Employees who opened their
5 work locations were required to first unlock the doors, turn on all the lights in the restaurant/facility
6 and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work
7 and the underpayment of wages owed to Aggrieved Employees. Based on further information and
8 belief, Aggrieved Employees in charge of closing their location(s) were required to first clock out
9 for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the
10 doors. This resulted in additional off-the-clock post-shift work that was not compensated and the
11 underpayment of wages owed to Aggrieved Employees.

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

15 45. Based on information and belief, at times, DEFENDANTS require/required
16 Aggrieved Employees to travel between and/or around DEFENDANTS' facilities and/or locations
17 without compensating Aggrieved Employees for the travel time.

18 46. For example, based on information and belief, due to scheduling issues and/or
19 understaffing, Aggrieved Employees were at times required after working at their scheduled facility
20 location to cover a shift at another of DEFENDANTS' facilities/locations but were not compensated
21 for the time spent driving to the second facility, resulting in the underpayment of minimum and
22 overtime wages owed to Aggrieved Employees.

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

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

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

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

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

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

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

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

1 Aggrieved Employees.

2 54. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
3 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
4 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
5 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
6 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
7 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
8 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
9 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
10 completely.

11 55. For example, based on information and belief, Aggrieved Employees were forced to
12 take late meal periods in order to complete assigned job duties. Based on information and belief,
13 Aggrieved Employees were at times interrupted during purported meal periods and/or had meal
14 periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned
15 job duties.

16 56. For example, per DEFENDANTS' unlawful meal period policies and practices,
17 PLAINTIFF was restricted to the worksite premises during unpaid meal periods and, as such, was
18 not relieved of all duties and DEFENDANTS' control during purportedly off-duty and unpaid meal
19 periods, resulting in denied meal periods and DEFENDANTS' failure to compensate PLAINTIFF
20 for all hours worked and the underpayment of wages owed to PLAINTIFF.

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

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

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

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

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

13 62. For example, based on information and belief, when Aggrieved Employees worked
14 more than ten (10) and/or twelve (12) hours in a shift, Aggrieved Employees were not provided with
15 a legally compliant second meal period.

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

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

26 65. Based on information and belief, DEFENDANTS had actual and/or constructive
27 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods
28 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in

1 violation of California's meal period laws.

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

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

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

17 69. Based on information and belief, DEFENDANTS did not have a have a compliant
18 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
19 practice.

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

24 71. For example, based on information and belief, PLAINTIFF and other Aggrieved
25 Employees were restricted to the worksite premises during any rest periods and, as such, were not
26 relieved of all duties and DEFENDANTS' control during any rest periods, in violation of California
27 rest period law.

28 72. Based on information and belief, DEFENDANTS failed to authorize and permit rest

1 periods that were a “net” ten minutes in a suitable rest area, and instead, to the extent rest periods
2 were provided, DEFENDANTS limited PLAINTIFF and other Aggrieved Employees to only ten-
3 minute rest periods, requiring them to be back at their workstations within ten minutes of leaving
4 their work stations , in violation of California rest period law.

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

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

11 75. Based on information and belief, DEFENDANTS implemented policies and/or
12 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
13 DEFENDANTS' control during rest periods.

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

17 77. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
18 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
19 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
20 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
21 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
22 shift differential pay, and/or other non-discretionary compensation into the regular rate of
23 compensation for purposes of calculating the owed rest period premium.

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

28 79. DEFENDANTS’ locations/facilities are generally similar in layout and design, and

1 there was, and continues to be, space that allows for a resting facility that employees may use to
2 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
3 Employees with a resting facility within DEFENDANTS' facilities/locations with reasonable or no
4 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a
5 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to
6 resting, including but not limited to leaning up against the wall, or search for facilities outside of
7 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
8 vehicles.

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

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

14 82. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
15 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
16 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
17 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
18 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
19 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
20 applicable hourly rates in effect during the pay period and the corresponding number of hours
21 worked at each hourly rate by the employee.

22 83. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
23 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
24 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
25 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
26 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
27 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
28 other off-the-clock work policies and practices described above) which results in a violation of

1 Labor Code section 226(a).

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

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

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

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

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

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

23 90. 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 91. **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 92. **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 93. 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 94. **Unreimbursed Business Expenses.** Based on information and belief,
21 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
22 as a 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 other
24 Aggrieved Employees were improperly required to provide and maintain work tools that are
25 supposed to be the responsibility of the employer.

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

1 Employees' personal cell phones/mobile devices, internet and/or data usage for work-related
2 purposes, including but not limited to, to receive and respond to work-related messages and/or phone
3 calls.

4 96. For example, based on information and belief, Aggrieved Employees were required
5 to receive and respond to work-related calls and/or messages from supervisors and/or other
6 Aggrieved Employees regarding scheduling and/or other work tasks but were not reimbursed by
7 DEFENDANTS at all and/or in full for these business expenses.

8 97. Based on information and belief, Aggrieved Employees were not reimbursed for the
9 cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform
10 their assigned job duties and/or for the costs of purchasing and/or maintaining work
11 uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

12 98. Based on information and belief, at times, Aggrieved Employees were not
13 reimbursed for the business use of their personal vehicles, including mileage, wear and tear and/or
14 cost of fuel when they were required to drive around and/or between job sites, and/or otherwise use
15 their personal vehicles in carrying out the duties assigned by DEFENDANTS. As such,
16 DEFENDANTS failed to compensate Aggrieved Employees at the legally mandated Internal
17 Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

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

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

27 101. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
28 for all reasonable expenses associated with carrying out their duties required that Aggrieved

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

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

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

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

23 105. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
24 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
25 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
26 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
27 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
28 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of

1 used sick leave and the balance of paid sick leave.

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

8 107. 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.

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

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

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

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

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

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

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

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

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

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

25 116. 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.

5 117. 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).

12 118. 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.

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

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

27 121. Upon separation of employment, Aggrieved Employees' final paychecks were not
28 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.

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

122. For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck for at least approximately several days following PLAINTIFF's termination of employment, and PLAINTIFF's late final paycheck was devoid of all wages owed, including without limitation, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, any shift differentials).

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

124. Unlawful Agreements-Unlawful Criminal History Inquiries.

Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

125. Based on information and belief, DEFENDANTS required Aggrieved Employees to agree in writing to unlawful conditions of employment including but not limited unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreement and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in

1 violation of Labor Code section 432.5.

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

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

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

24 129. Based on information and belief, DEFENDANTS required Aggrieved Employees to
25 agree in writing to a background check which failed to abide by the requirements set forth in CA
26 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
27 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
28 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for

1 the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,
2 failing to provide a way by which the individual could request a copy of the report, failing to disclose
3 the name, address, and telephone number of the third party preparing the report, and failing to
4 properly obtain authorization or consent to such a background check, and thus was an unlawful
5 background check.

6 130. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
7 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
8 section 432.5.

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

14 132. Based on further information and belief, DEFENDANTS knew that requiring
15 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
16 condition of obtaining and/or holding employment was unlawful.

17 133. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
18 condition of employment, DEFENDANTS violated Labor Code section 432.5.

19 Unlawful Inquires into Criminal History

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

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

Unlawful PAGA Waiver

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

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

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

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

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

141. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS

1 engaged in these same herein described unlawful practices, which led to violations of the California
2 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
3 unlawful practices to all of its employees that it applied to PLAINTIFF.

4
5 **FIRST CAUSE OF ACTION**
6 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
7 **2698, *ET SEQ.***

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

10 142. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

11 **Failure to Keep Accurate Records**

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

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

21 145. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
22 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
23 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
24 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
25 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
26 period during which the referenced statutes and Wage Order provisions were violated.²

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

1 **Meal Period Violations**

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

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

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

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

25 150. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
26 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
27 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
28 their meal periods due to understaffing, the nature and constraints of their job duties, and/or

commentary from supervisors pressuring them to take non-compliant meal periods or skip meal periods completely.

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

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

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

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

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

Rest Period Violations

156. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for

1 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
2 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
3 1029). The rest period requirement obligates employers to permit and authorize employees to take
4 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
5 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
6 257. If the employer fails to provide any required rest period, the employer must pay the employee
7 one hour of pay at the employee’s regular rate of compensation for each workday the employer did
8 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
9 applicable IWC Wage Order, §12(B).

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

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

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

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

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

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

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

14 **Failure to Provide Suitable Resting Facilities**

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

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

28 165. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities

1 during their hours of work, particularly during meal and/or rest periods.

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

5 **Minimum and Overtime Wage Violations**

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

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

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

26 170. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
27 Aggrieved Employees for all hours worked.

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

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

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

17 174. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
18 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
19 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
20 Wage Orders, section 20.

21 **Statutory Wage Violations**

22 175. California Labor Code section 223 makes it unlawful for an employer to secretly pay
23 wages lower than required by statute while purporting to pay legal wages. As described above,
24 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
25 earned minimum and overtime compensation for all hours worked which resulted in the payment of
26 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
27 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
28 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved

1 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
2 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
3 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
4 Labor Code § 2699(f)-(g).

5 **Refusal to Make Payment**

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

14 **Standard Conditions of Labor Violations**

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

23 **Business Expense Violations**

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

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

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

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

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

23 183. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
24 Employees have suffered injury in that they were not completely reimbursed as mandated by
25 California law.

26 184. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
27 full reimbursement for all reasonable expenses associated with carrying out their duties required
28 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business

1 expenses in violation of Labor Code section 2802.

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

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

9 **Wage Statement Violations**

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

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

27 189. Moreover, due to violations detailed above, including but not limited to,
28 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide

1 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
2 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
3 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
4 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
5 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
6 compensation earned during the pay period into the regular rate of pay for purposes of calculating
7 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
8 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

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

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

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

8 195. For example, based on information and belief, at times, DEFENDANTS issued wage
9 statement(s) to PLAINTIFF, that list a category for "Retro" pay without including the inclusive
10 dates of the accurate pay period for that "Retro" pay, further failing to list the total hours worked
11 for the pay period, including but not limited to, the total hours worked for the pay period the
12 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).

14 196. DEFENDANTS' failure to accurately list all hours worked on all wage statements
15 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
16 Employees over whether they received all wages owed to them.

17 197. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
18 they could not easily determine whether they received all wages owed to them and whether they
19 were paid for all hours worked.

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

23 199. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
24 Aggrieved Employees with accurate, itemized wage statements.

25 200. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
26 Employees have suffered injury. The absence of accurate information on their wage statements has
27 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
28 mathematical computations to determine the amount of wages owed, and will cause difficulty and

1 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
2 submission of inaccurate information about wages and amounts deducted from wages to state and
3 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
4 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
5 and pay records than if DEFENDANT had complied with its legal obligations.

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

9 **Unlawful Deductions**

10 202. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
11 an employee any part of wages theretofore paid by said employer to said employee.” Based on
12 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
13 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
14 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
15 Section 2699.

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

22 **Reporting Time Pay Violations**

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

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

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

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

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

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

15 **Violation of California Day of Rest Law**

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

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

26 **Seating Violations**

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

1 when they are not actively engaged in the work duties that would not permit them to be seated.

2 211. 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.

9 212. 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).

13 213. 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.

16 214. 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.

21 215. The Aggrieved Employees worked in various positions. The nature of Aggrieved
22 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
23 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
24 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
25 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
26 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
27 separate civil penalty.

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

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

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

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

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

24 **Sick Leave Violations**

25 220. DEFENDANTS violated California's paid sick leave laws including, Labor Code
26 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
27 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
28 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to

1 incorporate multiple rates of pay and/or all forms of 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.

4 221. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
5 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
6 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
7 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
8 Aggrieved Employees’ intelligent exercise of their paid sick leave.

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

13 223. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
14 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
15 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
16 were entitled to the maximum number of hours accruable.

17 224. 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.

22 225. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

23 226. On information and belief, PLAINTIFF alleges that all of these practices were
24 experienced and continue to be experienced by other Aggrieved Employees.

25 227. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
26 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
27 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

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

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

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

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

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

20 **Untimely Payment of Final Wages**

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

28 232. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages

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

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

12 234. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
13 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
14 256.

15 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

16 235. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
17 require any employee or applicant for employment to agree, in writing, to any term or condition
18 which is known by such employer...to be prohibited by law.”

19 236. The California Labor Code places certain procedural and substantive limits on an
20 employers’ ability to conduct employee background checks and on how employers can use the
21 information they obtain through those background checks. Labor Code section 1024.5 states that
22 employers, except for financial institutions, may order a credit check only if the individual works
23 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
24 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
25 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
26 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
27 background check, including but not limited to identifying an appropriate reason for the background
28 check, a separate consent form with required disclosures and certain formatting requirements,

1 additional forms such as a summary of rights, a way by which to request a copy of the report, as
2 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

15 240. Based on further information and belief, DEFENDANTS knew that requiring
16 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
17 condition of obtaining and/or holding employment was unlawful.

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

20 Unlawful Inquires into Criminal History

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

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

1 application in violation of California law.

2 244. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
3 Code section 432.7. By asking about convictions at the application phase or prior to extending an
4 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
5 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
6 disclose arrests and/or convictions as a condition of employment.

7 Unlawful PAGA Waiver

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

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

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

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

27 Violation of Labor Code Section 432.6

28 249. Based on information and belief, DEFENDANTS required Aggrieved Employees to

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

4 250. Labor Code Section 432.6(a) provides: “[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...”

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

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

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

17 254. Under the provisions of PAGA and the above mentioned Labor Code sections,
18 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
19 227.3, 245-248.6, 256, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1,
20 1198, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all interpretations
21 of these laws by California Courts and administrative bodies, as well as any other law that is
22 enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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

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PRAYER FOR RELIEF

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

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

Dated: February 7, 2024

CROSNER LEGAL, PC

By: 

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IRVING MURILLO GARCIA