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on behalf of the State of California and all Aggrieved Employees
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF RIVERSIDE**

12 TERRY TAYLOR, on behalf of the State of
California and all Aggrieved Employees,

13 Plaintiff,

14 v.
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16 UNITED FACILITIES, INC., an Illinois
17 Corporation; and DOES 1-100, inclusive,

18 Defendants.
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Case No.: **CVRI 2400946**

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

1 Plaintiff, TERRY TAYLOR, (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants UNITED
3 FACILITIES, INC., an Illinois Corporation; and DOES 1-100, inclusive, (collectively referred to
4 herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

5 **INTRODUCTION**

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

11 **JURISDICTION AND VENUE**

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

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

21 **THE PARTIES**

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

24 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
25 DEFENDANTS as a non-exempt employee with a job title of forklift operator and/or a similar
26 title(s) and/or position(s) from in or around 2010 through on or around October 19, 2023.
27 PLAINTIFF worked for DEFENDANTS at DEFENDANTS’ Perris, California location(s).

28 6. Defendant UNITED FACILITIES, INC. is an Illinois Corporation that, at all relevant
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PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 times, was authorized to do business within the State of California and is doing business in the State
2 of California.

3 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
4 warehouse distribution centers, logistics warehouses, warehouses, offices, facilities and/or other
5 location(s) in California, including but not limited to, the warehouse distribution centers, logistics
6 warehouses, warehouses, offices, facilities located in including but not limited to the following cities
7 in California: Fontana, California; Perris, California; Stockton, California; and Tracy, California.
8 DEFENDANTS, through its various locations, serve the warehousing and/or logistics industry.¹

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

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

25 **JOINT LIABILITY**

26 10. Under California law, the definition of the terms “to employ” are broadly construed
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28 ¹ See <https://unitedfacilities.com/locations>. Last visited on February 21, 2024.

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

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

24 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
25 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
26 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
27 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
28 policies and practices regardless of the location(s) where they worked. Among other things,

1 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
2 in DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control
3 over the day-to-day operations and employment matters, including the power to hire and fire, set
4 schedules, issue employee policies, and determine rates of compensation across its locations in
5 California; (3) DEFENDANTS utilize the same policies and procedures for all California
6 employees, including issuing the same employee handbooks and other form agreements; (4)
7 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
8 employment matters; and, (6) DEFENDANTS share employees.

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

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

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

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

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

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

PAGA ALLEGATIONS

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

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

20. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory

1 limitations period and suffered one or more of the Labor Code violations set forth herein.
2 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
3 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
4 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
5 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by
6 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
7 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
8 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
9 *Id.* at 760-761.

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

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

15 22. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
16 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
17 Employees.

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

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

26 **FACTUAL ALLEGATIONS**

27 25. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
28 worked for DEFENDANTS in the State of California. At all times referenced herein,

1 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
2 permitted them to work.

3 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
4 DEFENDANTS as a non-exempt employee with a job title of forklift operator and/or a similar
5 title(s) and/or position(s) from in or around 2010 through on or around October 19, 2023.
6 PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Perris, California location(s).
7 PLAINTIFF regularly worked at least eight (8) to twelve (12) hours per day, at least five (5) to six
8 (6) days per week.

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

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

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

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

28 31. For example, based on information and belief, DEFENDANTS required Aggrieved

1 Employees to be at their assigned workstations at the start of a scheduled shift, thereby forcing
2 Aggrieved Employees to gather work-related equipment and/or safety gear, make any necessary
3 adjustments to tools/equipment and/or perform maintenance/cleaning tasks, don work
4 clothing/uniforms and/or protective equipment, and/or complete other work tasks prior to their
5 scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock
6 work.

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

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

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

21 35. Based on information and belief, DEFENDANTS did not compensate Aggrieved
22 Employees for all time spent donning and doffing personal protective equipment, safety equipment
23 and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses, hard hats/bump caps/safety
24 helmets and/or face masks) during meal periods, before the start of a scheduled shift, and after
25 completing a scheduled shift, resulting in DEFENDANTS' failure to pay Aggrieved Employees for
26 all work time and the underpayment of minimum wages and overtime wages owed to Aggrieved
27 Employees.

28 36. Based on information and belief, at times, DEFENDANTS' electronic employee

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

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

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

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

23 40. Based on information and belief, DEFENDANTS failed to pay Aggrieved
24 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
25 Employee worked in California.

26 41. Moreover, based on information and belief, DEFENDANTS failed to pay
27 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split
28 shifts during the relevant period.

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

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

24 44. Based in information and belief, DEFENDANTS implemented a time-rounding
25 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
26 compensable time because the time-rounding system implemented by DEFENDANTS would
27 almost always, if not always, result in understating actual compensable work time.

28 45. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
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1 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
2 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
3 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
4 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
5 forty (40) hours in a week.

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

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

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

20 49. Additionally, DEFENDANTS also violated California's overtime laws as to those
21 Aggrieved Employees, including PLAINTIFF that were subject to an Alternative Workweek
22 Schedule (AWS).

23 50. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
24 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
25 and/or implemented in accordance with the requirements of California law and/or DEFENDANTS
26 failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws,
27 including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor
28 Code section 1198. For example, based on information and belief, there is no record of an AWS

1 election for PLAINTIFF's assigned workplace. Based on information and belief, DEFENDANTS
2 failed to properly adopt an AWS in accordance with Labor Code section 511 and 1199, and the
3 applicable Wage Order:

4 51. (C) Election Procedures Election procedures for the adoption and repeal of
5 alternative workweek schedules require the following: (1) Each proposal for an alternative
6 workweek schedule shall be in the form of a written agreement proposed by the employer. The
7 proposed agreement must designate a regularly scheduled alternative workweek in which the
8 specified number of workdays and work hours are regularly recurring. The actual days worked
9 within that alternative workweek schedule need not be specified. The employer may propose a single
10 work schedule that would become the standard schedule for workers in the work unit, or a menu of
11 work schedule options, from which each employee in the unit would be entitled to choose. If the
12 employer proposes a menu of work schedule options, the employee may, with the approval of the
13 employer, move from one menu option to another. (2) In order to be valid, the proposed alternative
14 workweek schedule must be adopted in a secret ballot election, before the performance of work, by
15 at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held
16 during regular working hours at the employees' work site. For purposes of this subsection, "affected
17 employees in the work unit" may include all employees in a readily identifiable work unit, such as
18 a division, a department, a job classification, a shift, a separate physical location, or a recognized
19 subdivision of any such work unit. A work unit may consist of an individual employee as long as
20 the criteria for an identifiable work unit in this subsection is met. (3) Prior to the secret ballot vote,
21 any employer who proposed to institute an alternative workweek schedule shall have made a
22 disclosure in writing to the affected employees, including the effects of the proposed arrangement
23 on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly
24 noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the
25 alternative workweek schedule. An employer shall provide that disclosure in a non- English
26 language, as well as in English, if at least five (5) percent of the affected employees primarily speak
27 that non-English language. The employer shall mail the written disclosure to employees who do not
28 attend the meeting. Failure to comply with this paragraph shall make the election null and void. (4)

1 Any election to establish or repeal an alternative workweek schedule shall be held at the work site
2 of the affected employees. The employer shall bear the costs of conducting any election held
3 pursuant to this section. Upon a complaint by an affected employee, and after an investigation by
4 the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral
5 third party to conduct the election. (5) Any type of alternative workweek schedule that is authorized
6 by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3)
7 of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of
8 the affected employees shall be required to reverse the alternative workweek schedule. The election
9 to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is
10 submitted to the employer, except that the election shall be held not less than 12 months after the
11 date that the same group of employees voted in an election held to adopt or repeal an alternative
12 workweek schedule. The election shall take place during regular working hours at the employees'
13 work site. If the alternative workweek schedule is revoked, the employer shall comply within 60
14 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may
15 grant an extension of time for compliance. (6) Only secret ballots may be cast by affected employees
16 in the work unit at any election held pursuant to this section. The results of any election conducted
17 pursuant to this section shall be reported by the employer to the Office of Policy, Research and
18 Legislation within 30 days after the results are final, and the report of election results shall be a
19 public document. The report shall include the final tally of the vote, the size of the unit, and the
20 nature of the business of the employer. (7) Employees affected by a change in the work hours
21 resulting from the adoption of an alternative workweek schedule may not be required to work those
22 new work hours for at least 30 days after the announcement of the final results of the election. (8)
23 Employers shall not intimidate or coerce employees to vote either in support of or in opposition to
24 a proposed alternative workweek.

25 52. No employees shall be discharged or discriminated against for expressing opinions
26 concerning the alternative workweek election or for opposing or supporting its adoption or repeal.
27 However, nothing in this section shall prohibit an employer from expressing his/her position
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1 concerning that alternative workweek to the affected employees. A violation of this paragraph shall
2 be subject to Labor Code § 98 *et seq.*

3 53. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to
4 comply with the above procedures, and thus, failed to properly institute an alternative workweek for
5 the purpose of obtaining a lawful exemption from overtime premiums for its mandated 10-hour/4-
6 day schedule. Based on information and belief, DEFENDANTS also failed to report the results to
7 the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the purported
8 election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This
9 conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage
10 Orders. These violations subject employer to civil penalties under Labor Code §§ 558 and 2699,
11 and All Applicable Wage Orders. Each violation of each Labor Code section and Wage Order
12 provision results in a separate civil penalty, for each Aggrieved Employee, for each pay period
13 during which the referenced statutes and Wage Order provisions were violated.

14 54. Moreover, to the extent there was an AWS that was properly adopted,
15 DEFENDANTS violated California's overtime laws as to Aggrieved Employees that were subject
16 to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the
17 agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee
18 to work fewer hours than those that are regularly scheduled by the agreement, the employer shall
19 pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's
20 regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is
21 required to work the reduced hours." See Section 3 of all applicable Wage Orders. Based on
22 information and belief, at times during Aggrieved Employees' respective employments by
23 DEFENDANTS, Aggrieved Employees worked subject to an alternative work week schedule.

24 55. Based on information and belief, at times, Aggrieved Employees that were subject
25 to an AWS, were sent home early and/or worked less hours than those that were scheduled under
26 the AWS. On such shortened shifts, Aggrieved Employees were entitled to overtime pay at 1.5 times
27 the regular rate of pay after the first eight hours of work. Instead, DEFENDANTS paid Aggrieved
28 Employees their base rate for all hours worked on the shortened shift(s) in violation of the alternative

1 workweek schedule, and in violation of California Labor Code section 510, the applicable Wage
2 Order, and Labor Code section 1198. As such, Aggrieved Employees that were subject to an AWS
3 were also deprived of all owed overtime wages when required to work shortened shifts.

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

13 **57.** For example, based on information and belief, Aggrieved Employees were forced to
14 take late meal periods in order to complete assigned job duties.

15 **58.** Based on information and belief, Aggrieved Employees were at times interrupted
16 during purported meal periods and/or had meal periods cut short and/or restricted to
17 DEFENDANTS' premises due to the need to continue assigned job duties.

18 **59.** Also, per DEFENDANTS' unlawful meal period policies and practices, PLAINTIFF
19 was not provided with any version of a second meal period on shifts lasting longer than ten (10)
20 and/or twelve (12) hours.

21 **60.** 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 **61.** 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 62. 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 63. 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 64. 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 65. For example, as explained above, when PLAINTIFF worked more than ten (10)
14 and/or twelve (12) hours in a shift, PLAINTIFF was not provided with any version of a second meal
15 period.

16 66. 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 67. 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 68. 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 69. 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 70. **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 71. 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 72. 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 73. 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 74. Based on information and belief, DEFENDANTS failed to authorize and permit rest
25 periods that were a "net" ten minutes in a suitable rest area, and instead, to the extent rest periods
26 were provided, DEFENDANTS limited Aggrieved Employees to only ten-minute rest periods,
27 requiring them to be back at their workstations within ten minutes of leaving their work stations , in
28 violation of California rest period law.

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

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

7 77. Based on information and belief, DEFENDANTS implemented policies and/or
8 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
9 DEFENDANTS' control during rest periods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 92. For example, based on information and belief, at times, DEFENDANTS issued wage
25 statement(s) to Aggrieved Employees that list a category for "Retro" pay without including the
26 inclusive dates of the accurate pay period for that "Retro" pay, further failing to list the total hours
27 worked for the pay period, including but not limited to, the total hours worked for the pay period
28 the retroactive pay corresponds with, in violation of including but not limited to, Labor Code section

1 226(a)(2) and/or Labor Code section 226(a)(6).

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

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

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

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

20 97. **Failure to Produce Employment Records.** Based on information and belief,
21 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
22 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
23 sections 226, 1198.5, 432, and/or the applicable Wage Order.

24 98. For example, PLAINTIFF, through counsel, sent a written request for payroll and
25 personnel records to DEFENDANTS, on or around including but not limited to the following dates:
26 12.05.23 and 01.19.24. Yet, DEFENDANTS failed to timely produce complete records within the
27 time periods delineated by California labor law. For example, DEFENDANTS failed to produce
28 PLAINTIFF's time records. Based on information and belief, DEFENDANTS failed and continues

1 to fail to timely produce complete payroll and personnel records when requested by other Aggrieved
2 Employees. Based on information and belief, DEFENDANTS failed and continue to fail to timely
3 produce complete time, pay, and personnel records when requested by other Aggrieved Employees.

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

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

18 101. **Violation of Labor Code Sections 2100-2112.** Based on information and belief,
19 DEFENDANTS had/have a policy and practice of failing to provide Aggrieved Employees, upon
20 hire, with a written description of each quota they are subject to (e.g., quantified number of tasks to
21 be performed or materials to be handled) within a defined period of time and any potential adverse
22 employment action that may result from failure to meet the quota. Based on further information and
23 belief, DEFENDANTS had/have a policy and practice of subjecting Aggrieved Employees to quotas
24 that prevented those Aggrieved Employees from taking their meal and rest periods and/or using
25 bathroom facilities and/or interfered with compliance of California's occupational health and safety
26 laws.

27 102. **Unreimbursed Business Expenses.** Based on information and belief,
28 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses

1 as a direct consequence of the performance of their job duties without providing reimbursement, in
2 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
3 Aggrieved Employees were improperly required to provide and maintain work tools that are
4 supposed to be the responsibility of the employer.

5 103. Based on information and belief, DEFENDANTS shifted the costs of doing business
6 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
7 to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of Aggrieved
8 Employees' personal cell phones/mobile devices, internet and/or data usage for work-related
9 purposes, including but not limited to, to receive and respond to work-related messages and/or phone
10 calls.

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

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

19 106. For example, DEFENDANTS required PLAINTIFF to supply his own protective
20 equipment / safety gear/uniforms/work clothing/work shoes, including without limitation, face
21 masks and/or other protective equipment / safety gear/uniforms/work clothing/work shoes
22 DEFENDANTS required PLAINTIFF wear for work, however, DEFENDANTS did not provide
23 any and/or full reimbursement for these business expenses.

24 107. Based on information and belief, at times, Aggrieved Employees were not
25 reimbursed for the business use of their personal vehicles, including mileage, wear and tear and/or
26 cost of fuel when they were required to drive around and/or between job sites, and/or otherwise use
27 their personal vehicles in carrying out the duties assigned by DEFENDANTS. As such,
28 DEFENDANTS failed to compensate Aggrieved Employees at the legally mandated Internal

1 Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

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

6 109. Based on information and belief, DEFENDANTS regularly failed to reimburse and
7 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
8 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
9 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
10 assigned by DEFENDANTS.

11 110. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
12 for all reasonable expenses associated with carrying out their duties required that Aggrieved
13 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
14 2802.

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

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

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

1 in accordance with California law.

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

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

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

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

27 118. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
28 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their

1 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
2 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
3 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
4 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
5 used sick leave and the balance of paid sick leave.

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

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

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

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

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

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

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

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

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

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

17 127. For example, DEFENDANTS' Aggrieved Employees worked in various positions,
18 including but not limited to, as assembly workers, warehouse workers, general laborers and/or other
19 similar job title(s) and/or job position(s). The nature of these Aggrieved Employees' work
20 reasonably permitted the use of seats. However, DEFENDANTS failed to provide suitable seating
21 in reasonable proximity to their work areas in violation of section 14(A-B) of all applicable Wage
22 Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under
23 Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage
24 Order provision, for each Aggrieved Employee, results in a separate civil penalty.

25 128. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
26 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
27 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
28 failing to pay all vested, accrued paid time off off (including but not limited to, all owed vacation

1 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
2 limited to, shift differentials) to Aggrieved Employees upon separation of employment, in violation
3 of California law, including but not limited to, Labor Code section 227.3.

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

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

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

24 **132. Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every
25 employee who is discharged shall be paid at the place of discharge, and every employee who quits
26 shall be paid at the office or agency of the employer in the county where the employee has been
27 performing labor. All payments shall be made in the manner provided by law. Based on information
28 and belief, DEFENDANTS have a policy and practice of failing to provide Aggrieved Employees

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

4 **133. Violation of Labor Code Sections 2100-2112.** Pursuant to Labor Code Sections
5 2100–2112, employers with one hundred (100) or more employees at a single warehouse
6 distribution center, or one thousand (1,000) or more employees at one or more warehouse
7 distribution centers in California are required to provide nonexempt employees, upon hire, with a
8 written description of each quota they are subject to (e.g., quantified number of tasks to be performed
9 or materials to be handled) within a defined period of time and any potential adverse employment
10 action that may result from failure to meet the quota. Labor Code Section 2102 (see below) prohibits
11 adverse employment actions against employees who fail to meet their quota if the quota was not
12 properly disclosed to the employee and prohibits quotas that prevent an employee from taking his
13 or her meal or rest breaks, use of restrooms, or that interfere with compliance with California’s
14 occupational health and safety laws.

15 134. Labor Code Section 2101 provides:

16 135. Each employer shall provide to each employee, upon hire, or within 30 days of the
17 effective date of this part, a written description of each quota to which the employee is subject,
18 including the quantified number of tasks to be performed or materials to be produced or handled,
19 within the defined time period, and any potential adverse employment action that could result from
20 failure to meet the quota.

21 136. Labor Code Section 2102 provides:

22 137. An employee shall not be required to meet a quota that prevents compliance with
23 meal or rest periods, use of bathroom facilities, including reasonable travel time to and from
24 bathroom facilities, or occupational health and safety laws in the Labor Code or division standards.
25 An employer shall not take adverse employment action against an employee for failure to meet a
26 quota that does not allow a worker to comply with meal and rest periods, or occupational health and
27 safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been
28 disclosed to the employee pursuant to Section 2101.

1 138. Labor Code Section 2104 provides in pertinent part:

2 139. (a)(1) If a current or former employee believes that meeting a quota caused a
3 violation of their right to a meal or rest period or required them to violate any occupational health
4 and safety laws in the Labor Code or division standards, they have the right to request, and the
5 employer shall provide, a written description of each quota to which the employee is subject and a
6 copy of the most recent 90 days of the employee's own personal work speed data.

7 140. (2) If a former employee requests a written description of the quotas to which they
8 were subject and a copy of their own personal work speed data pursuant to paragraph (1), the
9 employer shall provide 90 days of the former employee's quotas and personal work speed data for
10 the 90 days prior to the date of the employee's separation from the employer.

11 141. (b) An employer that receives a written or oral request for information pursuant to
12 subdivision (a) shall comply with the request as soon as practicable, but no later than 21 calendar
13 days from the date of the request.

14 142. Based on information and belief, during the relevant period, DEFENDANTS
15 employed 100 or more Aggrieved Employees at a single warehouse distribution center and/or
16 employed 1,000 or more Aggrieved Employees at one or more distribution centers in California
17 rendering DEFENDANTS subject to the provisions of Labor Code Sections 2100-2112, during the
18 relevant period.

19 143. Based on information and belief, DEFENDANTS had/have a policy and practice of
20 failing to provide Aggrieved Employees, upon hire, with a written description of each quota they
21 are subject to (e.g., quantified number of tasks to be performed or materials to be handled) within a
22 defined period of time and any potential adverse employment action that may result from failure to
23 meet the quota.

24 144. Based on further information and belief, DEFENDANTS had/have a policy and
25 practice of subjecting Aggrieved Employees to quotas that prevented those Aggrieved Employees
26 from taking their meal and rest periods and/or using bathroom facilities and/or interfered with
27 compliance of California's occupational health and safety laws.

28 145. Based on further information and belief, DEFENDANTS have/had a policy and

1 practice of subjecting Aggrieved Employees to adverse employment actions for failure to meet a
2 quota that was not disclosed pursuant to Labor Code Section 2101 and/or did not allow them to
3 comply with meal and rest period laws and/or occupational health and safety laws, in violation of
4 Labor Code section 2102.

5 146. Based on information and belief, DEFENDANTS failed and continue to fail to timely
6 produce upon written and/or oral request by current and/or former Aggrieved Employees of the
7 belief that meeting a quota caused a violation of their right to a meal or rest period and/or required
8 them to violate any occupational health and safety laws, a written description of each quota to which
9 the employee is subject and/or a copy of the most recent 90 days of the Aggrieved Employee's own
10 personal work speed data.

11 147. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
12 Code section 2100-2112 as to Aggrieved Employees and are subject to civil penalties.

13 148. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

14 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

1 invalid waivers are otherwise unlawful under Labor Code section 432.6. unlawful criminal and/or
2 financial checks as a condition of obtaining and/or continuing employment in violation of Labor
3 Code section 432.5.

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

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

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

28 154. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or

1 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
2 section 432.5.

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

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

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

13 Unlawful Inquires into Criminal History

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

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

23 Unlawful PAGA Waiver

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

27 161. An action pursuant to PAGA “...is a representative action on behalf of the state”
28 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements

1 purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and
2 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384
3 ("We conclude that where, as here, an employment agreement compels the waiver of representative
4 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.")

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

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

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

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

26
27 **FIRST CAUSE OF ACTION**
28 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
2698, ET SEQ.

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1 employee begins and ends each work period (including meal periods) and split intervals; total hours
2 worked by the employee; all deductions; gross wages earned; and net wages earned.

3 171. Section (b) of Labor Code section 226 further requires employers to “afford current
4 and former employees the right to inspect or receive a copy of records pertaining to their
5 employment upon reasonable request to the employer.” Section (c) of Labor Code section 226
6 provides that, “an employer who receives a written or oral request to inspect or receive a copy of
7 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
8 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
9 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
10 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
11 the employer. Lab. Code section 226(f).

12 172. Personnel Records. In addition to their right to time and pay records, employees, and
13 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
14 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
15 section 432 further specifies that employers must furnish copies of all employment records bearing
16 the employee’s signature. Labor Code section 1198.5 also requires that the file be made available
17 for inspection or receipt within a “reasonable” amount of time, but “not later than 30 calendar days
18 from the date the employer receives a written request.” An employer’s failure to comply within this
19 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
20 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

21 173. Based on information and belief, DEFENDANTS fail to timely produce or make
22 available Aggrieved Employees’ personnel records and/or payroll records when requested pursuant
23 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
24 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

25 **Meal Period Violations**

26 174. California law requires employers to provide employees a duty-free, uninterrupted
27 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and
28 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and

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

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

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

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

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

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

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

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

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

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

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

19 **Rest Period Violations**

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

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

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

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

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

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

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

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

10 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

1 **Minimum and Overtime Wage Violations**

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

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

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

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

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

1 Employees.

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

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

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

17 **Statutory Wage Violations**

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

1 **Refusal to Make Payment**

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

10 **Standard Conditions of Labor Violations**

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

19 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

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

5 **Wage Statement Violations**

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

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

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

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

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

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

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

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

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

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

28 224. Moreover, as a result of DEFENDANTS’ failure to list the correct name and/or

1 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered
2 injury as they could not contact their employer regarding any question(s) they had about wages paid.

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

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

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

17 **Unlawful Deductions**

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

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

28 ⁴ Labor Code § 226.3 (establishing that the civil penalty is ~~48~~per employee per violation").

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

3 **Reporting Time Pay Violations**

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

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

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

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

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

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

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

6 **Seating Violations**

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

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

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

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

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

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

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

1 of seats would not interfere with the performance of their duties.

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

9 **Sick Leave Violations**

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

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

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

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

1 were entitled to the maximum number of hours accruable.

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

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

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

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

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

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

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

25 **Untimely Payment of Final Wages**

26 252. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
27 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
28 payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an

1 employee not having a written contract for a definite period quits his or her employment, his or her
2 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
3 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
4 to his or her wages at the time of quitting.”

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

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

17 255. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
18 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
19 256.

20 **Violation of Labor Code Section 208**

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

25 257. Based on information and belief, DEFENDANTS have a policy and practice of
26 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
27 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
28 office or agency of DEFENDANTS in the county where the work was performed, in violation of

1 Labor Code Section 208.

2 **Violation of Labor Code Sections 2100-2112**

3 258. Pursuant to Labor Code Sections 2100–2112, employers with one hundred (100) or
4 more employees at a single warehouse distribution center, or one thousand (1,000) or more
5 employees at one or more warehouse distribution centers in California are required to provide
6 nonexempt employees, upon hire, with a written description of each quota they are subject to (e.g.,
7 quantified number of tasks to be performed or materials to be handled) within a defined period of
8 time and any potential adverse employment action that may result from failure to meet the quota.
9 Labor Code Section 2102 (see below) prohibits adverse employment actions against employees who
10 fail to meet their quota if the quota was not properly disclosed to the employee and prohibits quotas
11 that prevent an employee from taking his or her meal or rest breaks, use of restrooms, or that interfere
12 with compliance with California’s occupational health and safety laws.

13 259. Labor Code Section 2101 provides:

14 260. Each employer shall provide to each employee, upon hire, or within 30 days of the
15 effective date of this part, a written description of each quota to which the employee is subject,
16 including the quantified number of tasks to be performed or materials to be produced or handled,
17 within the defined time period, and any potential adverse employment action that could result from
18 failure to meet the quota.

19 261. Labor Code Section 2102 provides:

20 262. An employee shall not be required to meet a quota that prevents compliance with
21 meal or rest periods, use of bathroom facilities, including reasonable travel time to and from
22 bathroom facilities, or occupational health and safety laws in the Labor Code or division standards.
23 An employer shall not take adverse employment action against an employee for failure to meet a
24 quota that does not allow a worker to comply with meal and rest periods, or occupational health and
25 safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been
26 disclosed to the employee pursuant to Section 2101.

27 263. Labor Code Section 2104 provides in pertinent part:

28 264. (a)(1) If a current or former employee believes that meeting a quota caused a

1 violation of their right to a meal or rest period or required them to violate any occupational health
2 and safety laws in the Labor Code or division standards, they have the right to request, and the
3 employer shall provide, a written description of each quota to which the employee is subject and a
4 copy of the most recent 90 days of the employee's own personal work speed data.

5 265. (2) If a former employee requests a written description of the quotas to which they
6 were subject and a copy of their own personal work speed data pursuant to paragraph (1), the
7 employer shall provide 90 days of the former employee's quotas and personal work speed data for
8 the 90 days prior to the date of the employee's separation from the employer.

9 266. (b) An employer that receives a written or oral request for information pursuant to
10 subdivision (a) shall comply with the request as soon as practicable, but no later than 21 calendar
11 days from the date of the request.

12 267. Based on information and belief, during the relevant period, DEFENDANTS
13 employed 100 or more Aggrieved Employees at a single warehouse distribution center and/or
14 employed 1,000 or more Aggrieved Employees at one or more distribution centers in California
15 rendering DEFENDANTS subject to the provisions of Labor Code Sections 2100-2112, during the
16 relevant period.

17 268. Based on information and belief, DEFENDANTS had/have a policy and practice of
18 failing to provide Aggrieved Employees, upon hire, with a written description of each quota they
19 are subject to (e.g., quantified number of tasks to be performed or materials to be handled) within a
20 defined period of time and any potential adverse employment action that may result from failure to
21 meet the quota.

22 269. Based on further information and belief, DEFENDANTS had/have a policy and
23 practice of subjecting Aggrieved Employees to quotas that prevented those Aggrieved Employees
24 from taking their meal and rest periods and/or using bathroom facilities and/or interfered with
25 compliance of California's occupational health and safety laws.

26 270. Based on further information and belief, DEFENDANTS have/had a policy and
27 practice of subjecting Aggrieved Employees to adverse employment actions for failure to meet a
28 quota that was not disclosed pursuant to Labor Code Section 2101 and/or did not allow them to

1 comply with meal and rest period laws and/or occupational health and safety laws, in violation of
2 Labor Code section 2102.

3 271. Based on information and belief, DEFENDANTS failed and continue to fail to timely
4 produce upon written and/or oral request by current and/or former Aggrieved Employees of the
5 belief that meeting a quota caused a violation of their right to a meal or rest period and/or required
6 them to violate any occupational health and safety laws, a written description of each quota to which
7 the employee is subject and/or a copy of the most recent 90 days of the Aggrieved Employee's own
8 personal work speed data.

9 272. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
10 Code section 2100-2112 as to Aggrieved Employees and are subject to civil penalties.

11 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

12 273. *Unlawful Agreements.* Labor Code section 432.5 provides that "no employer...shall
13 require any employee or applicant for employment to agree, in writing, to any term or condition
14 which is known by such employer...to be prohibited by law." DEFENDANTS required and
15 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
16 conditions of employment including but not limited to, unlawful non-solicitation/non-compete
17 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
18 waivers, including but not limited to, unlawful meal period waivers, unlawful forum selection
19 clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial
20 checks as a condition of obtaining and/or continuing employment in violation of Labor Code section
21 432.5.

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

1 invalid waivers are otherwise unlawful under Labor Code section 432.6. unlawful criminal and/or
2 financial checks as a condition of obtaining and/or continuing employment in violation of Labor
3 Code section 432.5.

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

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

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

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

28 279. Based on further information and belief, DEFENDANTS knew that requiring

1 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
2 condition of obtaining and/or holding employment was unlawful.

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

5 Unlawful Inquires into Criminal History

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

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

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

20 Unlawful PAGA Waiver

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

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

1 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

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

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

12 **Violation of Labor Code Section 432.6**

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

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

20 290. Labor Code Section 432.6(b) provides in pertinent part:

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

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

1 refusal to waive their meal period rights.

2 293. Under the provisions of PAGA and the above mentioned Labor Code sections,
3 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
4 226.7, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1194,
5 1197, 1197.1, 1198, 1198.5, 1199, 2100-2112, 2699, 2699.3, 2802, 2810.5 and all applicable Wage
6 Orders as well as all interpretations of these laws by California Courts and administrative bodies, as
7 well as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
8 penalties:

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

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

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1 **PRAYER FOR RELIEF**

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

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

11
12 Dated: February 21, 2024

CROSNER LEGAL, PC

13
14 By: _____



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