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7 Attorneys for Plaintiff RANDY GOAD  
8 on behalf of the State of California  
and all Aggrieved Employees

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SANTA BARBARA – ANACAPA**

11 RANDY GOAD, on behalf of the State of  
12 California and all Aggrieved Employees,

13 Plaintiff,

14 v.

15  
16 SRG OPERATING, INC., a Delaware  
Corporation; SENIOR RESOURCE GROUP  
17 LLC, a Delaware Limited Liability  
Company; SRG PARTNERS, LLC, a  
18 Delaware Limited Liability Company; SRG  
PARTNERS COMMUNITIES  
19 INVESTMENT CO, LLC, a Delaware  
Limited Liability Company; and DOES 1-  
20 100, inclusive,

21 Defendants.

ELECTRONICALLY FILED  
Superior Court of California  
County of Santa Barbara  
Darrel E. Parker, Executive Officer  
2/5/2024 5:04 PM  
By: Terri Chavez , Deputy

Case No.: 24CV00643

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

1 Plaintiff, RANDY GOAD, (“PLAINTIFF”), on behalf of the State of California and all  
2 Aggrieved Employees (as defined below),, hereby files this Complaint against Defendants SRG  
3 OPERATING, INC., a Delaware Corporation; SENIOR RESOURCE GROUP LLC, a Delaware  
4 Limited Liability Company; SRG PARTNERS, LLC, a Delaware Limited Liability Company; SRG  
5 PARTNERS COMMUNITIES INVESTMENT CO, LLC, a Delaware Limited Liability Company;  
6 and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is  
7 informed and believes and thereon alleges as follows:

### 8 **INTRODUCTION**

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

### 14 **JURISDICTION AND VENUE**

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

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

### 25 **THE PARTIES**

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

28 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for  
2  
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS  
GENERAL ACT

1 DEFENDANTS as a non-exempt employee with a job title(s) of security guard dishwasher, kitchen  
2 helper and/or a similar title(s) and/or position(s) from in or around 2019 through in or around May  
3 8, 2023. PLAINTIFF worked for DEFENDANTS as a security guard and/or similar title(s) and/or  
4 position(s) for approximately three (3) to six (6) months during the relevant period. PLAINTIFF  
5 also worked for DEFENDANTS as a kitchen helper and/or dishwasher and/or similar title(s) and/or  
6 position(s) during the relevant period. PLAINTIFF worked for DEFENDANTS at DEFENDANTS'  
7 Santa Barbara, California location(s).

8 6. Defendant SRG OPERATING, INC. is a Delaware Corporation that, at all relevant  
9 times, was authorized to do business within the State of California and is doing business in the State  
10 of California.

11 7. Defendant SENIOR RESOURCE GROUP LLC is a Delaware Limited Liability  
12 Company that, at all relevant times, was authorized to do business within the State of California and  
13 is doing business in the State of California.

14 8. Defendant SRG PARTNERS, LLC is a Delaware Limited Liability Company that,  
15 at all relevant times, was authorized to do business within the State of California and is doing  
16 business in the State of California.

17 9. Defendant SRG PARTNERS COMMUNITIES INVESTMENT is a Delaware  
18 Limited Liability Company that, at all relevant times, was authorized to do business within the State  
19 of California and is doing business in the State of California.

20 10. DEFENDANTS own, operate, manage and/or staff its employees to work at the  
21 senior living communities and/or other communities, properties, facilities and/or other location(s)  
22 in California, including but not limited to senior living communities and/or other communities,  
23 properties, facilities and/or locations, including but not limited to, California locations operating  
24 under the following name(s) in the following cities and/or neighborhoods in California: The Village  
25 at Sherman Oaks in Sherman Oaks, California; The Village at Northridge in Northridge, California;  
26 River's Edge in Sacramento, California; Maravilla Santa Barbara in Santa Barbara, California; La  
27 Vida Real in San Diego, California; La Vida Del Mar in Solana Beach, California; and Peninsula  
28 Del Rey in Daly City, California. DEFENDANTS, through its various locations, serve the

1 hospitality industry.<sup>1</sup>

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

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

18 **JOINT LIABILITY**

19 13. Under California law, the definition of the terms “to employ” are broadly construed  
20 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to  
21 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)  
22 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49  
23 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control  
24 was to reach situations in which multiple entities control different aspects of the employment  
25 relationship. Supervision of the work, in the specific sense of exercising control over how services  
26 are properly performed, is properly viewed as one of the “working conditions” mentioned in the  
27

28 <sup>1</sup> See <https://www.srgseniorliving.com/>. Last visited on February 3, 2024.

1 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a  
2 temporary employment agency) hires and pays a worker, and the other entity supervises the work.  
3 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in  
4 California, applying a less stringent standard to what constitutes sufficient control by a business  
5 over its vendor’s employees’ wages and working conditions to render that business liable as a joint  
6 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative  
7 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the  
8 wages, hours, or working conditions of the employee, that is a sufficient showing of joint  
9 employment,” *Id.* at 875 [emphasis added].

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

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

1 employment matters; and, (6) DEFENDANTS share employees.

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

8 17. For example, DEFENDANTS, and each of them maintain the same principal place  
9 of business and/or agent for service for process as provided to the California Secretary of State and  
10 based on information and belief maintain some of the same attorneys and/or human resources  
11 personnel to oversee employment-related matters.

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

26 19. Thus, DEFENDANTS collectively exercised the right to control the wages, hours  
27 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS  
28 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved

1 Employees' employment, including the instrumentality that resulted in the illegal conduct for which  
2 PLAINTIFF seeks relief in this Complaint.

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

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

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

15 **PAGA ALLEGATIONS**

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

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

24 24. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code  
25 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory  
26 limitations period and suffered one or more of the Labor Code violations set forth herein.  
27 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved  
28 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

1 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved  
2 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by  
3 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23  
4 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations  
5 committed by the employer – regardless of whether Plaintiff experienced all violations personally.  
6 *Id.* at 760-761.

### 7 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

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

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

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

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

### 23 **FACTUAL ALLEGATIONS**

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

28 30. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for  
8  
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS  
GENERAL ACT

1 DEFENDANTS as a non-exempt employee with a job title(s) of security guard dishwasher, kitchen  
2 helper and/or a similar title(s) and/or position(s) from in or around 2019 through on or around May  
3 8, 2023. PLAINTIFF worked for DEFENDANTS as a security guard and/or similar title(s) and/or  
4 position(s) for approximately three (3) to six (6) months during the relevant period. PLAINTIFF  
5 also worked for DEFENDANTS as a kitchen helper and/or dishwasher and/or similar title(s) and/or  
6 position(s) during the relevant period. PLAINTIFF worked for DEFENDANTS at DEFENDANTS'  
7 Santa Barbara, California location(s). PLAINTIFF regularly worked at least eight (8) hours per day,  
8 at least five (5) days per week.

9 31. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by  
10 DEFENDANTS as hours worked. PLAINTIFF was also compensated with non-discretionary  
11 bonuses/incentive pay and/or other non-discretionary DEFENDANTS paid PLAINTIFF an hourly  
12 rate for time counted by DEFENDANTS as hours worked.

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

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

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

28 35. Based on information and belief, Aggrieved Employees were not paid for all hours

1 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours  
2 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-  
3 the clock work policies and/or practices.

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

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

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

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

27       40. For example, while working as a kitchen helper, dishwasher and/or similar title(s)  
28 and/or job position(s), PLAINTIFF was frequently required to clock out for the end of his shifts but

1 to continue completing work tasks off-the-clock, including but not limited to, cleaning the ice cream  
2 machine, resulting in at least five (5) minutes of post-shift off-the-clock work on many if not all  
3 days PLAINTIFF worked for DEFENDANTS as a kitchen helper, dishwasher and/or similar title(s)  
4 and/or position(s).

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

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

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

25 44. Moreover, based on information and belief, Aggrieved Employees who opened their  
26 work locations were required to first unlock the doors, turn on all the lights in the restaurant/facility  
27 and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work  
28 and the underpayment of wages owed to Aggrieved Employees. Based on further information and

1 belief, Aggrieved Employees in charge of closing their location(s) were required to first clock out  
2 for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the  
3 doors. This resulted in additional off-the-clock post-shift work that was not compensated and the  
4 underpayment of wages owed to Aggrieved Employees.

5 45. Based on information and belief, DEFENDANTS required Aggrieved Employees to  
6 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their  
7 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.  
8 Based on information and belief, at times, DEFENDANTS require/required Aggrieved Employees  
9 to travel between and/or around DEFENDANTS' facilities and/or locations without compensating  
10 Aggrieved Employees for the travel time. For example, based on information and belief, due to  
11 scheduling issues and/or understaffing, Aggrieved Employees were at times required after working  
12 at their scheduled facility location to cover a shift at another of DEFENDANTS' facilities/locations  
13 but were not compensated for the time spent driving to the second facility, resulting in the  
14 underpayment of minimum and overtime wages owed to Aggrieved Employees.

15 46. Based on information and belief, DEFENDANTS failed to pay Aggrieved  
16 Employees the applicable minimum wage for the State of California in effect during the relevant  
17 period. For example, based on information and belief, at times during the relevant period, including  
18 but not limited to, while working as a kitchen helper, dishwasher and/or other similar title(s) and/or  
19 position(s), DEFENDANTS compensated PLAINTIFF at an hourly rate of \$12, which was below  
20 the minimum wage rate in effect for the State of California. See California Labor Code Sections  
21 1182.12(b)(1)(F) and 1182.12(c)(1) (increasing the State of California minimum wage rate to \$15  
22 per hour effective January 1, 2022).

23 47. 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 48. For example, based on information and belief, DEFENDANTS failed to pay  
27 Aggrieved Employees working in DEFENDANTS' facilities located in the city of Los Angeles  
28 and/or within an unincorporated area of the county of Los Angeles, at the applicable minimum wage

1 rate(s) in effect for the city and/or county of Los Angeles, and as such failed to pay all owed  
2 minimum wages.

3 49. For example, based on information and belief, DEFENDANTS paid Aggrieved  
4 Employees an hourly rate which was below the minimum wage rate in effect for the city and/or  
5 county of Los Angeles. See Section 187.02(d) of the Los Angeles Municipal Code (increasing the  
6 minimum wage rate, effective July 1, 2023, by \$.74 for a new minimum wage rate of \$16.78 per  
7 hour) and Los Angeles County Minimum Wage Ordinance section 8.100.040 (increasing the  
8 minimum wage rate for the unincorporated areas of Los Angeles to \$16.90 per hour, effective July  
9 1, 2023).

10 50. Based on information and belief, DEFENDANTS failed to pay Aggrieved  
11 Employees working in DEFENDANTS' facilities located in the city of Daly at the applicable  
12 minimum wage rate(s) in effect for the city of Daly, and as such failed to pay all owed minimum  
13 wages.

14 51. For example, based on information and belief, DEFENDANTS paid Aggrieved  
15 Employees an hourly rate below the minimum wage rate in effect for the city of Daly. See, Daly  
16 City Code of Ordinances, Title 8 - Health and Safety, Chapter 8.76 - Minimum Wage, Section,  
17 8.76.020 (D) (increasing the minimum wage rate for the city of Daly to \$16.07, effective January 1,  
18 2023).

19 52. Moreover, based on information and belief, DEFENDANTS failed to pay  
20 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split  
21 shifts during the relevant period. For example, based on information and belief, at times,  
22 DEFENDANTS required PLAINTIFF and/or other Aggrieved Employees to work two separate  
23 shifts in the same day. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF  
24 and/or other Aggrieved Employees split shift compensation whenever PLAINTIFF's and/or other  
25 Aggrieved Employees' work schedules were interrupted by non-paid non-working periods  
26 established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See  
27 section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay  
28 at the minimum wage shall be paid in addition to the minimum wage for that workday...). See, also,

1 Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the  
2 minimum wage shall be paid in addition to the minimum wage for that workday, except when the  
3 employee resides at the place of employment).

4 53. DEFENDANTS also failed to separately itemize these split shift premium wages on  
5 PLAINTIFF's and/or other Aggrieved Employees' wage statements, in violation of Labor Code  
6 sections 510, 1194 and all applicable IWC Wage Orders. See,  
7 [https://www.dir.ca.gov/dlse/split\\_shift.htm](https://www.dir.ca.gov/dlse/split_shift.htm). (The employer must itemize the premium payment on  
8 the pay stub provided to the employee, and it should be shown as a separate category such as "Split  
9 Shift Premium" and should not be lumped into another category such as wages, bonus, etc.  
10 DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF  
11 and/or other Aggrieved Employees on their wage statements.

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

17 55. Based in information and belief, DEFENDANTS implemented a time-rounding  
18 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of  
19 compensable time because the time-rounding system implemented by DEFENDANTS would  
20 almost always, if not always, result in understating actual compensable work time.

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

27 57. Based on information and belief, DEFENDANTS had actual and/or constructive  
28 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to

1 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the  
2 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation  
3 of California's minimum and overtime wage laws.

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

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

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

22 61. For example, based on information and belief, Aggrieved Employees were forced to  
23 take late meal periods in order to complete assigned job duties.

24 62. Based on information and belief, Aggrieved Employees were at times interrupted  
25 during purported meal periods and/or had meal periods cut short and/or restricted to  
26 DEFENDANTS' premises due to the need to continue assigned job duties.

27 63. For example, PLAINTIFF was sometimes required to return to work while clocked  
28 out for purportedly off-duty meal periods due to the need to complete assigned job duties.

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

6           65.     Based on information and belief, DEFENDANTS implemented policies and/or  
7 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control  
8 during unpaid meal periods.

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

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

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

21           69.     Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and  
22 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further  
23 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor  
24 did DEFENDANTS have any sort of compliant policy in practice.

25           70.     Moreover, based on information and belief, DEFENDANTS failed to keep accurate  
26 records of the true start and end times of PLAINTIFF's and Aggrieved Employees' meal periods.  
27 Based on information and belief, to the extent meal periods were recorded, DEFENDANTS illegally  
28 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other

1 Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal  
2 periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

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

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

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

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

22 75. Based on information and belief, DEFENDANTS did not have a have a compliant  
23 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in  
24 practice.

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

1           77. For example, based on information and belief, PLAINTIFF was sometimes if not  
2 always required to work through part or all of one or more of his owed rest periods each shift and/or  
3 was not provided rest periods that were off-duty for a “net” ten minutes in a suitable rest area. Based  
4 on information and belief, DEFENDANTS did not have a lawful policy, instruction, or practice as  
5 to the taking, timing, or duty-free nature of rest periods.

6           78. Based on information and belief, DEFENDANTS failed to authorize and permit rest  
7 periods that were a “net” ten minutes in a suitable rest area, and instead, to the extent rest periods  
8 were provided, DEFENDANTS limited PLAINTIFF and other Aggrieved Employees to only ten-  
9 minute rest periods, requiring them to be back at their workstations within ten minutes of leaving  
10 their work stations, in violation of California rest period law.

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

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

17           81. Based on information and belief, DEFENDANTS implemented policies and/or  
18 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and  
19 DEFENDANTS' control during rest periods.

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

23           83. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in  
24 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in  
25 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each  
26 workday a proper rest period was not provided and/or failed to pay the proper rest period premium  
27 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,  
28 shift differential pay, and/or other non-discretionary compensation into the regular rate of

1 compensation for purposes of calculating the owed rest period premium.

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

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

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

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

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

28       89.     DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved

1 Employees that also failed to indicate the earned gross and net wages earned during the pay period,  
2 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF  
3 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal  
4 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid  
5 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or  
6 other off-the-clock work policies and practices described above) which results in a violation of  
7 Labor Code section 226(a).

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

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

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

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

24 94. Based on information and belief, wage statements issued by DEFENDANTS failed  
25 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid. For  
26 example, based on information and belief, wage statements issued by DEFENDANTS failed to list  
27 the inclusive dates of the pay period for which the Aggrieved Employee is being paid.

28 95. For example, based on information and belief, at times, DEFENDANTS issued wage

1 statements to Aggrieved Employees containing payment for hours worked during previous pay  
2 periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate  
3 pay period for that retroactive pay, further failing to list the total hours worked for the pay period,  
4 including but not limited to, the total hours worked for the pay period the retroactive pay corresponds  
5 with.

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

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

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

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

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

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

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

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

21           104.   Based on information and belief, DEFENDANTS shifted the costs of doing business  
22 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited  
23 to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of Aggrieved  
24 Employees' personal cell phones/mobile devices, internet and/or data usage for work-related  
25 purposes, including but not limited to, to receive and respond to work-related messages and/or phone  
26 calls. For example, based on information and belief, Aggrieved Employees were required to receive  
27 and respond to work-related calls and/or messages from supervisors and/or other Aggrieved  
28 Employees regarding scheduling and/or other work tasks but were not reimbursed by

1 DEFENDANTS at all and/or in full for these business expenses.

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

6 106. For example, DEFENDANTS required PLAINTIFF to supply his own flashlight  
7 and/or other hand tools and/or uniforms/work clothing/work shoes/equipment required to carry out  
8 the job duties assigned to PLAINTIFF while working for DEFENDANTS as a security guard and/or  
9 similar title(s) and/or position(s), further requiring PLAINTIFF to supply his own non-slip shoes  
10 and/or other uniforms/work clothing/shoes/protective/safety equipment and/or tools for carrying out  
11 his assigned job duties as a kitchen helper and/or dishwasher and/or other similar title(s) and/or  
12 position(s). However, DEFENDANTS failed to provide any and/or full reimbursement to  
13 PLAINTIFF for the business expenses PLAINTIFF incurred in connection with being required to  
14 purchase and/or maintain uniforms/work clothing/work shoes/equipment and/or hand tools required  
15 to carry out PLAINTIFF's assigned job duties.

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

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

26 109. Based on information and belief, DEFENDANTS regularly failed to reimburse and  
27 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section  
28 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable

1 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties  
2 assigned by DEFENDANTS.

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

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

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

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

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

27 115. **Violation of California Day of Rest Law.** Under California law, every employee in  
28 California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" its

1 employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor  
2 Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

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

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

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

26 119. Based on information and belief, throughout the relevant time period,  
27 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and  
28 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for

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

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

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

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

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

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

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

27 (B) When employees are not engaged in the active duties of their employment and the  
28 nature of the work requires standing, an adequate number of suitable seats shall be placed in

1 reasonable proximity to the work area and employees shall be permitted to use such seats when it  
2 does not interfere with the performance of their duties.

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

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

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

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

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

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

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

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

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

18 133. Based on information and belief, DEFENDANTS have a policy and practice of  
19 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place  
20 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the  
21 office or agency of DEFENDANTS in the county where the work was performed, in violation of  
22 Labor Code Section 208.

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

24 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

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

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

26 139. Based on information and belief, DEFENDANTS required Aggrieved Employees to  
27 agree in writing to a background check which failed to abide by the requirements set forth in CA  
28 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by

1 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,  
2 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for  
3 the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,  
4 failing to provide a way by which the individual could request a copy of the report, failing to disclose  
5 the name, address, and telephone number of the third party preparing the report, and failing to  
6 properly obtain authorization or consent to such a background check, and thus was an unlawful  
7 background check.

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

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

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

19 143. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a  
20 condition of employment, DEFENDANTS violated Labor Code section 432.5.

21 Unlawful Inquires into Criminal History

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

26 145. Upon information and belief, DEFENDANTS, in violation of California law,  
27 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act  
28 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of

1 employment and/or otherwise impermissibly inquired into criminal history on its employment  
2 application in violation of California law, and in violation of Labor code section 432.5.

3 Unlawful PAGA Waiver

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

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

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

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

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

1 terminating Aggrieved Employees because of their refusal to waive their meal period rights.

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

6 **FIRST CAUSE OF ACTION**  
7 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**  
8 **2698, *ET SEQ.***  
9 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**  
10 **DEFENDANTS)**

11 152. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

12 **Failure to Keep Accurate Records**

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

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

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

28 <sup>2</sup> Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor  
Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the  
employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil  
penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes

1           **Meal Period Violations**

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

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

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

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

25          160. As explained above, PLAINTIFF and other Aggrieved Employees were consistently  
26 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often

27 \_\_\_\_\_  
28 to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each  
pay period during which the employee was underpaid”) (emphasis added).

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

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

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

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

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

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

25 **Rest Period Violations**

26 166. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer  
27 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours  
28 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period

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

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

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

28 169. Based on information and belief, DEFENDANTS implemented policies and/or  
35  
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS  
GENERAL ACT

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

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

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

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

16 **Failure to Provide Suitable Resting Facilities**

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

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

1 vehicles.

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

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

7 **Minimum and Overtime Wage Violations**

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

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

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

28 180. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and  
37  
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS  
GENERAL ACT

1 Aggrieved Employees for all hours worked.

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

8 182. Based on information and belief, DEFENDANTS failed to pay all due overtime  
9 wages due to including but not limited to, DEFENDANTS' failure to calculate the owed overtime  
10 rate(s) based on the applicable minimum wage rates in effect for the city and/or county in which the  
11 Aggrieved Employee worked and/or the applicable minimum wage rate in effect for the State of  
12 California.

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

17 184. Based on information and belief, DEFENDANTS further violated California's  
18 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not  
19 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary  
20 compensation into the regular rate of pay used to calculate the overtime rate of pay.

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

27 186. Failing to include non-discretionary compensation into the regular rate of pay  
28 resulted in a miscalculation of the overtime wage rate, resulting in the underpayment of overtime

1 wages owed to PLAINTIFF and other Aggrieved Employees.

2 187. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,  
3 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS  
4 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC  
5 Wage Orders, section 20.

6 **Statutory Wage Violations**

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

18 **Refusal to Make Payment**

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

27 <sup>3</sup> 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           **Standard Conditions of Labor Violations**

2           190. Together, Labor Code sections 1198 and 1199 make unlawful any employment of  
3 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,  
4 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including  
5 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS’  
6 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,  
7 minimum/overtime wages and other violations described herein result in separate violations of  
8 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections  
9 1197.1 and 2699.

10           **Business Expense Violations**

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

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

25           193. Further, “any contract or agreement, express or implied, made by any employee to  
26 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive  
27 any employee or his personal representative of any right or remedy to which he is entitled to under

1 the laws of this State.” See Cal. Lab. Code section 2804.

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

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

8 196. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved  
9 Employees have suffered injury in that they were not completely reimbursed as mandated by  
10 California law.

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

15 198. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved  
16 Employees have suffered injury in that they were not completely reimbursed as mandated by  
17 California law.

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

22 **Wage Statement Violations**

23 200. California law requires every employer semi-monthly or at the time of each payment  
24 of wages to furnish its employees with an accurate itemized wage statement in writing that contains  
25 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of  
26 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;  
27 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee  
28 is paid; (7) the name of the employee and only the last four digits of his or her social security number

1 or an employee identification number other than a social security number; (8) the name and address  
2 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay  
3 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

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

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

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

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

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

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

11           207. DEFENDANTS' failure to accurately list all hours worked on all wage statements  
12 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved  
13 Employees over whether they received all wages owed to them.

14           208. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as  
15 they could not easily determine whether they received all wages owed to them and whether they  
16 were paid for all hours worked.

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

20           210. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and  
21 Aggrieved Employees with accurate, itemized wage statements.

22           211. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved  
23 Employees have suffered injury. The absence of accurate information on their wage statements has  
24 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and  
25 mathematical computations to determine the amount of wages owed, and will cause difficulty and  
26 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the  
27 submission of inaccurate information about wages and amounts deducted from wages to state and  
28 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to

1 participate in this lawsuit and create more difficulty and expense from having to reconstruct time  
2 and pay records than if DEFENDANT had complied with its legal obligations.

3 212. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.  
4 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period  
5 during which the statute provisions were violated. <sup>4</sup>

6 **Unlawful Deductions**

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

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

19 **Reporting Time Pay Violations**

20 215. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

28 <sup>4</sup> Labor Code § 226.3 (establishing that the civil penalty is ~~4~~<sup>1</sup> per employee per violation”).

1 minimum wage.

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

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

12 **Violation of California Day of Rest Law**

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

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

23 **Seating Violations**

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

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

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

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

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

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

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

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

27 **Sick Leave Violations**

28 227. DEFENDANTS violated California's paid sick leave laws including, Labor Code  
46  
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS  
GENERAL ACT

1 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to  
2 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to  
3 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to  
4 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but  
5 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary  
6 compensation into the sick leave pay rate calculation.

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

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

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

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

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

26 233. On information and belief, PLAINTIFF alleges that all of these practices were  
27 experienced and continue to be experienced by other Aggrieved Employees.

28 234. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the  
47  
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS  
GENERAL ACT

1   aforementioned code provisions including but not limited to Labor Code section 233 and 234, and  
2   seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

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

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

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

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

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

23           **Untimely Payment of Final Wages**

24           238.   California Labor Code section 201(a) provides, in relevant part, that "[i]f an  
25   employer discharges an employee, the wages earned and unpaid at the time of discharge are due and  
26   payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an  
27   employee not having a written contract for a definite period quits his or her employment, his or her  
28   wages shall become due and payable not later than 72 hours thereafter, unless the employee has

1 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled  
2 to his or her wages at the time of quitting.”

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

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

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

18         **Violation of Labor Code Section 208**

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

23         243. Based on information and belief, DEFENDANTS have a policy and practice of  
24 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place  
25 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the  
26 office or agency of DEFENDANTS in the county where the work was performed, in violation of  
27 Labor Code Section 208.

28         **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

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

1 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

19               Unlawful Inquires into Criminal History

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

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

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

6                   Unlawful PAGA Waiver

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

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

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

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

26                   Violation of Labor Code Section 432.6

27          259. Based on information and belief, DEFENDANTS required Aggrieved Employees to  
28 sign meal period waivers that were universally signed as a condition of employment, including but

1 not limited to, during the onboarding process. Further, these invalid waivers are otherwise unlawful  
2 under Labor Code section 432.6.

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

6 261. Labor Code Section 432.6(b) provides in pertinent part:

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

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

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

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

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

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

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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.

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12 Dated: February 5, 2024

**CROSNER LEGAL, PC**

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14 By: \_\_\_\_\_



15 Jamie K. Serb, Esq.  
16 Brandon Brouillette, Esq.  
17 Zachary M. Crosner, Esq.  
18 Attorneys for Plaintiff  
19 RANDY GOAD  
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