

JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
SEPIDEH ARDESTANI, ESQ. (SBN 274259)
sepideh@crosnerlegal.com
ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

Attorneys for Plaintiffs AMPARITO DOMINGUEZ, TAMERIA HARTLEY, MARIEL JINN GARCIA, MARINA MARTINEZ, and JENNIFER THORNTON on behalf of the State of California and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

AMPARITO DOMINGUEZ, TAMERIA HARTLEY, MARIEL JINN GARCIA, MARINA MARTINEZ, and JENNIFER THORNTON, on behalf of the State of California and all Aggrieved Employees,

Plaintiffs,

v.

DAVITA INC., a Delaware Corporation;
VILLAGEHEALTH DM, LLC, a Delaware Limited Liability Company; TOTAL RENAL CARE, INC., a California Corporation; RENAL TREATMENT CENTERS - CALIFORNIA, INC., a Delaware Corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: **CVRI2401146**

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

1 Plaintiffs, AMPARITO DOMINGUEZ, TAMERIA HARTLEY, MARIEL JINN GARCIA,
2 MARINA MARTINEZ, and JENNIFER THORNTON (“PLAINTIFFS”), on behalf of the State of
3 California and all Aggrieved Employees (as defined below), hereby files this Complaint against
4 Defendants DAVITA INC., a Delaware Corporation; VILLAGEHEALTH DM, LLC, a Delaware
5 Limited Liability Company; TOTAL RENAL CARE, INC., a California Corporation; RENAL
6 TREATMENT CENTERS - CALIFORNIA, INC., a Delaware Corporation; and DOES 1-100,
7 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFFS are informed and
8 believe and thereon allege as follows:

9 **INTRODUCTION**

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

15 **JURISDICTION AND VENUE**

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

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

25 **THE PARTIES**

26 4. PLAINTIFFS are, and at all relevant times, were individuals domiciled in the State
27 of California and a citizen of the State of California.

28 5. PLAINTIFFS are former and/or current employees of DEFENDANTS.

1 PLAINTIFFS worked for DEFENDANTS as non-exempt employees.

2 6. PLAINTIFF DOMINGUEZ worked for DEFENDANTS as a care coordinator and/or
3 similar title(s) and/or positions from on or around February 7, 2022 through in or around January
4 2023, at DEFENDANTS' facilities located in Southgate, Whittier, Lynwood, Norwalk and Downey
5 that operate/operated under the name "VillageHealth" and/or "VillageHealth DM, LLC."
6 PLAINTIFF DOMINGUEZ regularly worked at least eight (8) hours per day, at least five (5) days
7 per week.

8 7. PLAINTIFF HARTLEY worked for DEFENDANTS as a CCHT (Certified
9 California Hemo Technician) and/or similar title(s) and/or position(s) from in or around January
10 2000 through in or around the end of 2023. PLAINTIFF HARTLEY typically worked at least ten
11 (10) to twelve (12) hours per day. PLAINTIFF worked for DEFENDANTS at DEFENDANTS'
12 facilities located in Merced, Atwater and Turlock, California.

13 8. PLAINTIFF GARCIA worked for DEFENDANTS as a Patient Care Technician
14 and/or Technician Preceptor and/or Master Cannulator and/or similar title(s) and/or position(s) from
15 in or around 2013 through on or around April 18, 2023. PLAINTIFF typically worked
16 approximately two (2) days per week at DEFENDANTS' San Bernardino facilities and
17 approximately three (3) days per week at DEFENDANTS' Indio location(s).

18 9. PLAINTIFF MARTINEZ worked for DEFENDANTS as a Patient Care Technician
19 and/or similar title(s) and/or position(s) from in or around 2021 through on or around December 5,
20 2023, at DEFENDANTS' facilities located in Colton, Serrano, Highland Ranch, Citrus Valley, and
21 Upland, California. PLAINTIFF MARTINEZ typically worked at least ten (10) to fifteen (15) hours
22 per day, at least five (5) days per week.

23 10. PLAINTIFF THORNTON worked for DEFENDANTS as a patient care technician
24 and/or other similar title(s). PLAINTIFF THORNTON worked at DEFENDANTS' facilities
25 located in Diamond Valley and Murrieta. PLAINTIFF THORNTON's job required her to assist in
26 the provision of dialysis treatment for ESRD patients. PLAINTIFF THORNTON's job duties
27 included but were not limited to, opening/closing the facilities, receiving patients into the treatment
28 area, taking and recording patient vital signs, setting up and/or monitoring dialysis machines and

1 equipment and the water system for proper functioning, initiating dialysis treatment to patients,
2 monitoring patients receiving dialysis, dismantling dialysis machines and equipment, cleaning and
3 disinfectant duties, reviewing records, performing assigned clerical duties, among other duties.
4 PLAINTIFF THORNTON typically worked shifts lasting at least twelve (12) to fourteen (14) hours,
5 at least three (3) days per week.

6 11. At all relevant times, PLAINTIFFS were non-exempt employees that were
7 compensated by DEFENDANTS on an hourly basis for time counted by DEFENDANTS as hours
8 worked. Based on information and belief, DEFENDANTS also compensated PLAINTIFFS and
9 other Aggrieved Employees with non-discretionary bonuses/incentive pay, shift differential pay
10 and/or other non-discretionary remuneration.

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

14 13. Defendant VILLAGEHEALTH DM, LLC is a Delaware Limited Liability Company
15 that, 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 14. Defendant TOTAL RENAL CARE, INC. is a California Corporation that, at all
18 relevant times, was authorized to do business within the State of California and is doing business in
19 the State of California.

20 15. Defendant RENAL TREATMENT CENTERS - CALIFORNIA, INC. is a Delaware
21 Corporation that, at all relevant times, was authorized to do business within the State of California
22 and is doing business in the State of California.

23 16. DEFENDANTS own, operate, manage and/or staff its employees to work at dialysis
24 centers, treatment centers, medical offices, home / remote offices, healthcare facilities and/or other
25 facilities and/or other location(s) in California, including but not limited to DEFENDANTS' dialysis
26 centers, treatment centers, medical offices, home / remote offices, healthcare facilities and/or other
27 facilities located in Southgate, Whittier, Lynwood, Norwalk and Downey, Merced, Atwater,
28 Turlock, San Bernardino, Indio, Colton, Serrano, Highland Ranch, Citrus Valley, and Upland,

1 California. DEFENDANTS own, operate, and / or otherwise manage a business that provides
2 healthcare services, including but not limited to, kidney dialysis services for patients with chronic
3 kidney failure and End Stage Renal Disease (“ESRD”). DEFENDANTS, through its various
4 locations, serve the healthcare industry.¹

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

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

21 **JOINT LIABILITY**

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

28 ¹ See <https://www.davita.com/>. Last visited on March 1, 2024.

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

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

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

1 California employees, including issuing the same employee handbooks and other form agreements;
2 (4) DEFENDANTS use at least some of the same Human Resources personnel and attorneys to
3 oversee employment matters; and, (6) DEFENDANTS share employees.

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

10 23. For example, based on information and belief, DEFENDANTS, and each of them,
11 maintain the same Agent for Service of Process and/or mailing address as provided to the California
12 Secretary of State and use some of the same attorneys and/or human resources personnel to oversee
13 employment-related matters.

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

28 25. Thus, DEFENDANTS collectively exercised the right to control the wages, hours

1 and working conditions of PLAINTIFFS and Aggrieved Employees. As such, DEFENDANTS
2 collectively held the right to control virtually every aspect of PLAINTIFFS' and the Aggrieved
3 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
4 PLAINTIFFS seeks relief in this Complaint.

5 26. PLAINTIFFS are informed and believe that DEFENDANTS exercised the same
6 control over, applied the same policies and practices, and engaged in the same acts and omissions
7 with regard to the other Aggrieved Employees.

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

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

17 **PAGA ALLEGATIONS**

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

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

26 30. PLAINTIFFS is an "aggrieved employee," as that term is defined under Labor Code
27 section 2699(c), as PLAINTIFFS was employed by DEFENDANTS during the applicable statutory
28 limitations period and suffered one or more of the Labor Code violations set forth herein.

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

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

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

14 32. PLAINTIFFS’ PAGA Notice outlined PLAINTIFFS’ claims for violations of the
15 California Labor Code and the applicable wage orders on behalf of the State of California and all
16 Aggrieved Employees.

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

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

25 **FACTUAL ALLEGATIONS**

26 35. During the relevant period, PLAINTIFFS, and each of the Aggrieved Employees,
27 worked for DEFENDANTS in the State of California. At all times referenced herein,
28 DEFENDANTS exercised control over PLAINTIFFS and Aggrieved Employees, and suffered

1 and/or permitted them to work.

2 36. PLAINTIFF DOMINGUEZ worked for DEFENDANTS as a care coordinator and/or
3 similar title(s) and/or positions from on or around February 7, 2022 through in or around January
4 2023, at DEFENDANTS' facilities located in Southgate, Whittier, Lynwood, Norwalk and Downey
5 that operate/operated under the name "VillageHealth" and/or "VillageHealth DM, LLC."
6 PLAINTIFF DOMINGUEZ regularly worked at least eight (8) hours per day, at least five (5) days
7 per week.

8 37. PLAINTIFF HARTLEY worked for DEFENDANTS as a CCHT (Certified
9 California Hemo Technician) and/or similar title(s) and/or position(s) from in or around January
10 2000 through in or around the end of 2023. PLAINTIFF HARTLEY typically worked at least ten
11 (10) to twelve (12) hours per day. PLAINTIFF worked for DEFENDANTS at DEFENDANTS'
12 facilities located in Merced, Atwater and Turlock, California.

13 38. PLAINTIFF GARCIA worked for DEFENDANTS as a Patient Care Technician
14 and/or Technician Preceptor and/or Master Cannulator and/or similar title(s) and/or position(s) from
15 in or around 2013 through on or around April 18, 2023. PLAINTIFF typically worked
16 approximately two (2) days per week at DEFENDANTS' San Bernardino facilities and
17 approximately three (3) days per week at DEFENDANTS' Indio location(s).

18 39. PLAINTIFF MARTINEZ worked for DEFENDANTS as a Patient Care Technician
19 and/or similar title(s) and/or position(s) from in or around 2021 through on or around December 5,
20 2023, at DEFENDANTS' facilities located in Colton, Serrano, Highland Ranch, Citrus Valley, and
21 Upland, California. PLAINTIFF MARTINEZ typically worked at least ten (10) to fifteen (15) hours
22 per day, at least five (5) days per week.

23 40. PLAINTIFF THORNTON worked for DEFENDANTS as a patient care technician
24 and/or other similar title(s). PLAINTIFF THORNTON worked at DEFENDANTS' facilities
25 located in Diamond Valley and Murrieta. PLAINTIFF THORNTON's job required her to assist in
26 the provision of dialysis treatment for ESRD patients. PLAINTIFF THORNTON's job duties
27 included but were not limited to, opening/closing the facilities, receiving patients into the treatment
28 area, taking and recording patient vital signs, setting up and/or monitoring dialysis machines and

1 equipment and the water system for proper functioning, initiating dialysis treatment to patients,
2 monitoring patients receiving dialysis, dismantling dialysis machines and equipment, cleaning and
3 disinfectant duties, reviewing records, performing assigned clerical duties, among other duties.
4 PLAINTIFF THORNTON typically worked shifts lasting at least twelve to fourteen hours, at least
5 three (3) days per week.

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

8 42. Based on information and belief, DEFENDANTS also compensated PLAINTIFFS
9 and other Aggrieved Employees with non-discretionary bonuses/incentive pay, shift differential pay
10 and/or other non-discretionary remuneration.

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

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

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

27 46. For example, based on information and belief, DEFENDANTS have a policy and
28 practice of requiring Aggrieved Employees to perform off-the-clock work outside of scheduled shift

1 times and/or prior to clocking in for the start of their shifts and/or after clocking out for the end of
2 their shifts, resulting in the underpayment of wages owed to Aggrieved Employees.

3 47. For example, Aggrieved Employees were consistently suffered, permitted and/or
4 required to perform pre-shift and/or post-shift off-the-clock work.

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

9 49. Based on information and belief, Aggrieved Employees were required to be at their
10 respective workstations at their scheduled shift start time or face discipline. As such, Aggrieved
11 Employees typically arrived at work prior to their scheduled shift start times so that they could
12 perform any required pre-shift work, including but not limited to, bestow personal items in employee
13 lockers/storage area, retrieve and/or compile work tools/equipment, make any necessary adjustments
14 to tools/equipment don work clothing/uniforms and/or protective equipment, and/or complete other
15 work tasks so as to be ready to be at their respective work stations at the their scheduled shift start
16 time as mandated by DEFENDANTS. This pre-shift off-the-clock work was neither recorded nor
17 compensated resulting in the substantial underpayment of wages owed to Aggrieved Employees.

18 50. Based on information and belief, Aggrieved Employees were at times required to wait
19 in line behind other Aggrieved Employees to enter DEFENDANTS' facilities and/or access
20 DEFENDANTS' time-keeping system so they could then clock in for the start of their shifts which
21 said waiting time spent under DEFENDANTS' control that was neither recorded nor compensated,
22 resulting in DEFENDANTS' failure to compensate PLAINTIFF and other Aggrieved Employees for
23 all time worked and the underpayment of minimum wages and overtime wages owed to PLAINTIFF
24 and other Aggrieved Employees.

25 51. For example, PLAINTIFF THORNTON was consistently required to perform pre-
26 shift and/or post-shift off-the-clock work. For example, prior to clocking in to work, PLAINTIFF
27 THORNTON and other Aggrieved Employees were required to undergo pre-shift temperature checks
28 and were also required to answer COVID-related screening questions prior to clocking into work.

1 Upon satisfactory completion of the temperature check and screening questionnaire, Aggrieved
2 Employees were required to walk to the locker area to don uniforms and/or safety/protective
3 equipment and/or bestow any personal items in the lockers before clocking in for their shifts, often
4 resulting in at least several minutes of pre-shift off-the-clock uncompensated worktime each day. At
5 times, PLAINTIFF THORNTON was required to wait an additional several minutes for
6 administrative personnel to arrive at the facility entrance to perform the temperature check and
7 screening and/or PLAINTIFF THORNTON would have to spend time standing in line behind other
8 employees and/or patients also entering the building before PLAINTIFF THORNTON underwent the
9 mandated off-the-clock temperature check and screening process, adding at least an additional few
10 minutes of unrecorded and uncompensated work time to PLAINTIFF THORNTON's workday.

11 52. Based on information and belief, at times, Aggrieved Employees were required to
12 travel through the medical facility to access the time clock in their assigned departments, which took
13 an average of at least a couple minutes each shift.

14 53. Also, based on information and belief, PLAINTIFF THORNTON and other
15 Aggrieved Employees were required to attend work meetings (e.g., daily "homeroom" meetings to
16 discuss the day-to-day operations of the facility) after clocking out for the end of their shifts and/or
17 during uncompensated meal periods, resulting in significant off-the-clock work and the underpayment
18 of minimum and overtime wages owed to PLAINTIFF THORNTON and other Aggrieved
19 Employees.

20 54. Moreover, based on information and belief, PLAINTIFF THORNTON and other
21 Aggrieved Employees were required to perform additional off-the-clock work for which they were
22 not compensated. For example, on days PLAINTIFF THORNTON closed her work location,
23 PLAINTIFF THORNTON was required to enable the alarm and lock the doors after clocking out for
24 work. This resulted in at least several minutes of uncompensated work time. At the beginning of a
25 shift, PLAINTIFF THORNTON and/or the other Aggrieved Employees in charge of opening the
26 location were required to first unlock the doors, then disengage the alarm. This resulted in additional
27 off-the-clock post-shift work that was not compensated.

28 55. Based on information and belief, Aggrieved Employees were required to travel

1 through the medical facility/DEFENDANTS' facilities to access the time clock in their assigned
2 departments, which took an average of at least a couple minutes each shift.

3 56. Based on information and belief, Aggrieved Employees were required to perform post-
4 shift off-the-clock work that was neither recorded nor compensated. For example, based on
5 information and belief, Aggrieved Employees were required to put away their work tools/equipment,
6 provide shift debriefings/make/receive work-related communications, assist patients, change out of
7 their work clothing/uniforms and/or protective gear after clocking out for the end of their shifts,
8 resulting in DEFENDANTS' failure to compensate Aggrieved Employees for all time worked and
9 the underpayment of minimum wages and overtime wages owed to Aggrieved Employees. For
10 example, based on information and belief, Aggrieved Employees were at times required to clock out
11 for the end of their shifts but were required to return back to work off-the-clock due to the need to
12 assist patients and/or complete other assigned job duties.

13 57. For example, at least approximately once per month, PLAINTIFF GARCIA was
14 required to clock out for the end of PLAINTIFF GARCIA's shift but to continue working, due to the
15 need to complete assigned work tasks, including but not limited to, ordering supplies for
16 DEFENDANTS and/or completing other off-the-clock work tasks outside of PLAINTIFF GARCIA's
17 scheduled shift times, resulting in DEFENDANTS' failure to compensate PLAINTIFF GARCIA for
18 all work time and the underpayment of wages owed to PLAINTIFF GARCIA.

19 58. Similarly, PLAINTIFF DOMINGUEZ was at times required to assist patients and/or
20 complete other work tasks prior to clocking in for the start of PLAINTIFF DOMINGUEZ's shift
21 and/or after clocking out for the end of shift. This off-the-clock work was not recorded and not
22 compensated, resulting in DEFENDANTS' failure to compensate PLAINTIFF DOMINGUEZ for all
23 work time and the underpayment of wages owed to PLAINTIFF DOMINGUEZ.

24 59. Based on information and belief, DEFENDANTS did not compensate Aggrieved
25 Employees for time spent donning and doffing uniforms and/or personal protective equipment and/or
26 safety equipment (e.g., gloves and/or face masks and/or hair coverings and/or shoe coverings) during
27 meal periods, before the start of a scheduled shift, and after completing a scheduled shift, resulting in
28 off-the-clock work and the underpayment of wages owed to Aggrieved Employees.

1 60. For example, based on information and belief, DEFENDANTS did not compensate
2 PLAINTIFF THORNTON and other Aggrieved Employees for time spent donning and doffing
3 personal protective equipment and/or uniforms during meal periods, rest periods, before the start of a
4 scheduled shift, and after completing a scheduled shift.

5 61. Based on information and belief, DEFENDANTS required PLAINTIFF and other
6 Aggrieved Employees to obtain Covid-related testing outside of their scheduled shift times without
7 compensating them for the time spent completing DEFENDANTS' testing requirements.

8 62. Based on information and belief, DEFENDANTS performed an automatic deduction
9 for meal periods that were worked through, interrupted, cut short, and/or during which Aggrieved
10 Employees were not relieved of all duties and DEFENDANTS' control, resulting in DEFENDANTS'
11 failure to compensate Aggrieved Employees for all hours worked and the underpayment of minimum
12 wages and overtime wages owed to Aggrieved Employees.

13 63. For example, PLAINTIFF HARTLEY was frequently if not always required to take
14 shortened, on duty and/or interrupted unpaid meal periods and/or work through her unpaid meal
15 periods completely due to the need to complete assigned job duties. Based on information and belief,
16 DEFENDANTS would unlawfully edit the clock in and out times for PLAINTIFF HARTLEY's and
17 other Aggrieved Employees' meal periods in order to display at least a thirty minute, timely, off-duty
18 meal period during most if not all shifts worked, notwithstanding the fact that DEFENDANTS had
19 actual and/or constructive knowledge that DEFENDANTS had required PLAINTIFF HARTLEY and
20 other Aggrieved Employees' to perform work-related tasks during their meal periods, resulting in
21 DEFENDANTS' failure to compensate PLAINTIFF HARTLEY and other Aggrieved Employees for
22 all hours worked and the underpayment of wages owed to PLAINTIFF HARTLEY and other
23 Aggrieved Employees.

24 64. Similarly, at times, PLAINTIFF GARCIA was required to clock out for meal periods
25 but to continue working due to the need to complete assigned work tasks, resulting in
26 DEFENDANTS' failure to compensate PLAINTIFF GARCIA for all hours worked and the
27 underpayment of wages owed to PLAINTIFF GARCIA.

28 65. Based on information and belief, Aggrieved Employees were also pressured to

1 complete at least some of their work tasks off-the-clock in order to meet DEFENDANTS' goals and
2 expectations. For example, based on information and belief, Aggrieved Employees were required to
3 complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-
4 related phone calls and/or messages they received to their phones and were required to respond to,
5 including but not limited to, communications from supervisors regarding scheduling and/or other
6 work tasks, resulting in the underpayment of wages owed to Aggrieved Employees.

7 66. For example, PLAINTIFF DOMINGUEZ was frequently required to complete off-
8 the-clock work tasks, including without limitation, making and/or responding to work-related
9 communications, including but not limited to, on PLAINTIFF DOMINGUEZ's purported days off,
10 during unpaid meal periods and/or otherwise outside of scheduled shift times, resulting in
11 DEFENDANTS' failure to compensate PLAINTIFF DOMINGUEZ for all work time and the
12 underpayment of wages owed to PLAINTIFF DOMINGUEZ.

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

17 68. Based on information and belief, at times, Aggrieved Employees were required after
18 working at their scheduled facility location to cover a shift and/or work a second shift at another of
19 DEFENDANTS' facilities/locations but were not compensated for the time spent driving and/or
20 traveling to the second facility and/or second location resulting in off-the-clock work and the
21 underpayment of wages owed to Aggrieved Employees.

22 69. Based on information and belief, at times, Aggrieved Employees also were required
23 to perform off-the-clock work duties at home/remotely, such as but not limited to, completing
24 trainings/continued education courses and/or reviewing policies and/or other documents remotely as
25 mandated by DEFENDANTS.

26 70. Based on information and belief, DEFENDANTS' electronic employee time-keeping
27 system/app at times malfunctioned such that Aggrieved Employees were required to either reinitiate
28 the system/app prior to being able to clock in and/or were unable to clock in at all for the start of their

1 shifts and/or clock back in from meal periods, resulting in consistent off-the-clock work and the
2 underpayment of minimum and overtime wages owed to Aggrieved Employees. Based on
3 information and belief, Aggrieved Employees experienced the same issues when clocking out for
4 shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not
5 recorded and not compensated and resulted in unpaid minimum wages.

6 71. For example, PLAINTIFF THORNTON reports there were numerous occasions when
7 DEFENDANTS' electronic timekeeping device did not function properly such that PLAINTIFF
8 THORNTON had to unplug the device, plug it back in, then wait for the system to reinitiate before
9 she could clock in for the start of her shift. PLAINTIFF THORNTON and other Aggrieved
10 Employees experienced the same issues when clocking out for shifts and/or back in for meal periods.
11 This time spent under DEFENDANTS' control was not recorded and not compensated and resulted
12 in unpaid minimum and overtime wages.

13 72. Based on information and belief, DEFENDANTS' Kronos timekeeping software was
14 hacked in 2021 and/or later and DEFENDANTS failed to maintain accurate records of hours worked
15 during pay periods following the hack and/or during the hack and instead paid Aggrieved
16 Employees, including but not limited to, PLAINTIFF GARCIA, based on scheduled hours worked
17 rather than actual hours worked and/or otherwise failed to pay for all hours worked due to a failure
18 to maintain accurate records of the total hours worked, leading to unpaid minimum and overtime
19 wages.

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

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

21 75. Based in information and belief, DEFENDANTS implemented a time-rounding
22 system that as applied systematically deprived PLAINTIFFS and other Aggrieved Employees of
23 compensable time because the time-rounding system implemented by DEFENDANTS would
24 almost always, if not always, result in understating actual compensable work time.

25 76. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
26 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
27 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
28 minimum wages owed to PLAINTIFFS and Aggrieved Employees as well as unpaid overtime wages

1 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
2 forty (40) hours in a week.

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

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

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

17 80. Additionally, DEFENDANTS also violated California's overtime laws as to those
18 Aggrieved Employees that were subject to an Alternative Workweek Schedule (AWS).

19 81. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
20 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
21 and/or implemented in accordance with the requirements of California law and/or DEFENDANTS
22 failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws,
23 including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor
24 Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an
25 AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

26 82. (C) Election Procedures Election procedures for the adoption and repeal of
27 alternative

28 83. workweek schedules require the following: (1) Each proposal for an alternative

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

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

20 84.

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

26 86.

27 87. On information and belief, PLAINTIFFS allege that DEFENDANTS failed to
28 comply with the above procedures, and thus, failed to properly institute an alternative workweek for

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

10 88.

11 89. Moreover, to the extent there was an AWS that was properly adopted,
12 DEFENDANTS violated California's overtime laws as to Aggrieved Employees that were subject
13 to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the
14 agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee
15 to work fewer hours than those that are regularly scheduled by the agreement, the employer shall
16 pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's
17 regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is
18 required to work the reduced hours." See Section 3 of all applicable Wage Orders. Based on
19 information and belief, at times during Aggrieved Employees' respective employments by
20 DEFENDANTS, Aggrieved Employees worked subject to an alternative work week schedule.
21 Based on information and belief, at times, Aggrieved Employees that were subject to an AWS, were
22 sent home early and/or worked less hours than those that were scheduled under the AWS. On such
23 shortened shifts, Aggrieved Employees were entitled to overtime pay at 1.5 times the regular rate of
24 pay after the first eight hours of work. Instead, DEFENDANTS paid Aggrieved Employees their
25 base rate for all hours worked on the shortened shift(s) in violation of the alternative workweek
26 schedule, and in violation of California Labor Code section 510, the applicable Wage Order, and
27 Labor Code section 1198. As such, Aggrieved Employees that were subject to an AWS were also
28 deprived of all owed overtime wages when required to work shortened shifts.

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

10 91. For example, PLAINTIFF DOMINGUEZ was at times required to take late meal
11 periods and/or shortened and/or interrupted meal periods due to the need to complete assigned job
12 duties. Based on information and belief, DEFENDANTS would edit PLAINTIFF DOMINGUEZ's
13 time records to make it appear as though PLAINTIFF had taken an uninterrupted, off-duty meal
14 period of at least thirty minutes each shift notwithstanding that DEFENDANTS had actual and/or
15 constructive knowledge that PLAINTIFF DOMINGUEZ did not receive compliant meal periods.

16 92. Similarly, PLAINTIFF HARTLEY was frequently if not always required to take
17 shortened, on duty and/or interrupted unpaid meal periods and/or work through her unpaid meal
18 periods completely due to the need to complete assigned job duties. Based on information and
19 belief, DEFENDANTS would unlawfully edit the clock in and out times for PLAINTIFF
20 HARTLEY's and other Aggrieved Employees' meal periods in order to display at least a thirty
21 minute, timely, off-duty meal period during most if not all shifts worked, notwithstanding the fact
22 that DEFENDANTS had actual and/or constructive knowledge that DEFENDANTS had required
23 PLAINTIFF HARTLEY and other Aggrieved Employees' to perform work-related tasks during
24 their meal periods, resulting in meal period law violations as well as DEFENDANTS' failure to
25 compensate PLAINTIFF HARTLEY and other Aggrieved Employees for all hours worked and the
26 underpayment of wages owed to PLAINTIFF HARTLEY and other Aggrieved Employees.

27 93. Similarly, at times, PLAINTIFF GARCIA was required to clock out for meal periods
28 but to continue working due to the need to complete assigned work tasks. Other times, PLAINTIFF

1 GARCIA was required to take his meal period late – i.e. after the fifth hour of work – due to the
2 need to complete assigned job duties.

3 94. Likewise, at times, PLAINTIFF THORNTON was regularly interrupted during her
4 meal breaks to attend work meetings, e.g., DEFENDANTS’ daily “homeroom” meetings to discuss
5 the day-to-day operations of the facility. On information and belief, other Aggrieved Employees
6 were also forced to take late, interrupted and/or shortened meal periods due to understaffing,
7 pressure from supervisors to take noncompliant meal breaks and/or the nature and constraints of
8 their job duties/need to keep up with distribution deadlines and/or complete other work tasks.

9 95. Moreover, based on information and belief, PLAINTIFF THORNTON and other
10 Aggrieved Employees were required to monitor work communication devices during purportedly
11 off-duty meal periods.

12 96. For example, at times, PLAINTIFF THORNTON’s meal breaks were interrupted
13 with work-related communications (e.g., on the public announcement system) she was required to
14 respond to during purportedly off-duty meal breaks. Based on further information and belief,
15 Aggrieved Employees were required to remain on DEFENDANTS’ premises and/or were tethered
16 to DEFENDANTS’ communication devices during purported meal periods, and thus remained
17 subjected to DEFENDANTS’ control during meal periods.

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

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

26 99. For example, as explained above, based on information and belief, Aggrieved
27 Employees were required to remain on DEFENDANTS’ premises and/or were tethered to
28 DEFENDANTS’ communication devices during purported meal periods, and thus remained

1 subjected to DEFENDANTS' control during unpaid meal periods.

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

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

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

14 103. For example, when PLAINTIFF HARTLEY worked shifts lasting longer than ten
15 (10) and/or twelve (12) hours, PLAINTIFF was not provided with any version of a second meal
16 period.

17 104. Moreover, when PLAINTIFF MARTINEZ worked shifts lasting longer than ten (10)
18 and/or twelve (12) hours, PLAINTIFF MARTINEZ was typically if not always denied a compliant
19 second meal period.

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

24 106. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
25 records of the true start and end times of PLAINTIFFS' and Aggrieved Employees' meal periods.
26 Based on information and belief, to the extent meal periods were recorded, DEFENDANTS illegally
27 rounded the start and end times of purported meal periods resulting in PLAINTIFFS and other
28 Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal

1 periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

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

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

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

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

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

24 112. For example, PLAINTIFFS were frequently if not always required to work through
25 part or all of their owed rest periods each shift worked due to the need to complete assigned job
26 duties.

27 113. Based on information and belief, any purported rest periods were interrupted, cut
28 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of

1 their job duties, and/or commentary from supervisors pressuring them to skip rest periods
2 completely and/or take non-compliant rest periods.

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

5 115. Based on information and belief, DEFENDANTS implemented policies and/or
6 practices that failed to relieve PLAINTIFFS and other Aggrieved Employees of all duties and
7 DEFENDANTS' control during rest periods. For example, based on information and belief,
8 Aggrieved Employees were restricted to the worksite premises and/or were required to monitor and
9 respond to work communication devices during any rest periods, in violation of California rest
10 period law.

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

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

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

25 119. DEFENDANTS' locations/facilities are generally similar in layout and design, and
26 there was, and continues to be, space that allows for a resting facility that employees may use to
27 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
28 Employees with a resting facility within DEFENDANTS' facilities/locations with reasonable or no

1 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a
2 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to
3 resting, including but not limited to leaning up against the wall, or search for facilities outside of
4 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
5 vehicles.

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

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

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

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

27 124. Separately, and independent of the above allegations, based on information and
28 belief, DEFENDANTS issued wage statements to Aggrieved Employees that failed to list the total

1 hours worked during the pay period, in violation of, including but not limited to, Labor Code section
2 226(a)(2).

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

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

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

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

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

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

28 131. **Inaccurate Records.** Based on the above-described unlawful policies and practices,

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

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

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

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

1 but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

2 135. For example, PLAINTIFF MARTINEZ was frequently required to make and/or
3 respond to work-related communications using her personal cell phone/mobile device, including but
4 not limited to, during the course of her shifts, however, DEFENDANTS did not provide PLAINTIFF
5 MARTINEZ with any and/or full reimbursement for the business expenses she incurred in
6 connection with being required to use her personal cell phone/mobile device to carry out her
7 assigned job duties.

8 136. Similarly, at times, PLAINTIFF THORNTON received work-related calls and
9 messages to her personal phone from managers and/or supervisors, including but not limited to,
10 regarding scheduling/other work tasks. PLAINTIFF THORNTON was not reimbursed for these
11 business expenses.

12 137. Based on information and belief, DEFENDANTS failed to reimburse Aggrieved
13 Employee for expenses associated with having to purchase and/or maintain their own uniforms/work
14 clothing/work shoes/personal protective/safety gear and/or hand tools and/or equipment required to
15 perform their assigned job duties.

16 138. For example, PLAINTIFF DOMINGUEZ was required to purchase and maintain her
17 own uniforms/work clothing/work shoes and/or protective/safety gear, including without limitation,
18 scrubs that DEFENDANTS required PLAINTIFF DOMINGUEZ wear for work, however,
19 DEFENDANTS did not provide PLAINTIFF DOMINGUEZ with any and/or full reimbursement
20 for these business expenses.

21 139. Likewise, PLAINTIFF HARTLEY was required to purchase and maintain her own
22 uniforms/work clothing/work shoes and/or protective/safety gear, including without limitation, slip-
23 resistant shoes and/or other uniforms/work clothing/shoes and/or personal protective/safety gear that
24 DEFENDANTS required PLAINTIFF DOMINGUEZ wear for work, however, DEFENDANTS did
25 not provide PLAINTIFF HARTLEY with any and/or full reimbursement for these business
26 expenses PLAINTIFF HARTLEY incurred in connection with being required to purchase and/or
27 maintain uniforms/work clothing/work shoes and/or personal protective and/or safety gear
28 DEFENDANTS required PLAINTIFF HARTLEY wear for work.

1 140. Likewise, PLAINTIFF MARTINEZ was required to purchase and maintain her own
2 uniforms/work clothing/work shoes and/or protective/safety gear, including without limitation,
3 scrubs and/or other uniforms/work clothing/shoes and/or personal protective/safety gear that
4 DEFENDANTS required PLAINTIFF DOMINGUEZ wear for work, however, DEFENDANTS did
5 not provide PLAINTIFF MARTINEZ with any and/or full reimbursement for these business
6 expenses PLAINTIFF MARTINEZ incurred in connection with being required to purchase and/or
7 maintain uniforms/work clothing/work shoes and/or personal protective and/or safety gear
8 DEFENDANTS required PLAINTIFF MARTINEZ wear for work.

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

15 142. Based on information and belief, DEFENDANTS required Aggrieved Employee to
16 work remotely, including but not limited to, from their homes. As a result of working from home,
17 Aggrieved Employees were required to use their home internet, electricity, and other utilities in the
18 discharge of their job duties. Based on information and belief, DEFENDANTS lacked and continue
19 to lack a policy to reimburse employees who regularly increased utility expenses as a result of
20 working from home. Aggrieved Employees' increased utility and internet expenses were expenses
21 for which DEFENDANTS were required to reimburse Aggrieved Employee a reasonable
22 percentage based on their required business use because said expenses were necessarily incurred by
23 Aggrieved Employee as a direct consequence of the discharge of their duties of employment.
24 However, DEFENDANTS failed to reimburse Aggrieved Employee for these business expenses
25 incurred as a result of being required to work from their homes, in violation of California law. For
26 example, based on information and belief, DEFENDANTS required Aggrieved Employee to access
27 certain documents, including but not limited to, pay stubs through DEFENDANTS' online portal
28 using their personal computers and/or cell phones but fails to pay for a portion of Aggrieved

1 Employees' electric and/or internet and/or cell phone bills.

2 143. Based on information and belief, DEFENDANTS fail and continue to fail to
3 reimburse Aggrieved Employee for expenses Aggrieved Employee incurred in connection with
4 DEFENDANTS' mandated testing and/or licensing requirements, and/or expenses incurred in
5 obtaining certifications and/or re-certifications as required by DEFENDANTS.

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

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

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

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

21 148. (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 minimum wage.

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

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

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

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

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

1 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
2 compensation into the sick leave pay rate calculation.

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

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

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

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

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

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

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

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

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

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

15 162. 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.

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

27 164. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
28 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that

1 were due and owing upon termination or resignation. Based on information and belief,
2 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
3 requirements of Labor Code sections 201-202.

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

11 166. For example, DEFENDANTS failed to furnish PLAINTIFF HARTLEY with any
12 final paycheck until at least one (1) week after DEFENDANTS terminated PLAINTIFF
13 HARTLEY's employment, and PLAINTIFF HARTLEY's late final paycheck was devoid of all
14 wages owed, including without limitation, including but not limited to, all owed minimum wages,
15 overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at
16 the properly accrued rates, (including but not limited to, all owed vacation pay/paid time off paid at
17 the final rate including non-discretionary compensation, including but not limited to, shift
18 differentials).

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

27 168. **Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every
28 employee who is discharged shall be paid at the place of discharge, and every employee who quits

1 shall be paid at the office or agency of the employer in the county where the employee has been
2 performing labor. All payments shall be made in the manner provided by law.

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

8 170. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

9 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

1 violation of Labor Code section 432.5.

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

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

21 176. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
22 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
23 section 432.5.

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

1 178. Based on further information and belief, DEFENDANTS knew that requiring
2 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
3 condition of obtaining and/or holding employment was unlawful.

4 179. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
5 condition of employment, DEFENDANTS violated Labor Code section 432.5.

6 Unlawful Inquires into Criminal History

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

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

16 Unlawful PAGA Waiver

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

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

26 184. Moreover, the California Supreme Court has ruled that a court cannot compel
27 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an
28 individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is

1 no individual component to a PAGA action because ‘every PAGA action ... is a representative
2 action on behalf of the state.’”)

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

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

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

17 187. PLAINTIFFS incorporates all preceding paragraphs as if fully alleged herein.

18 **Failure to Keep Accurate Records**

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

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

28 190. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
PLAINTIFFS and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under

1 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
2 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
3 period during which the referenced statutes and Wage Order provisions were violated.²

4 **Meal Period Violations**

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

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

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

21 194. Employers must pay employees an additional hour of wages at the employees’
22 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
23 meal period, first meal period provided after five (5) hours, second meal period provided after 10
24 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to

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

1 provide an employee a meal period in accordance with the applicable provision of this Order, the
2 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
3 for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

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

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

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

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

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

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

1 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

2 **Rest Period Violations**

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

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

27 203. PLAINTIFFS and the Aggrieved Employees did not receive legally compliant,
28 timely 10-minute rest periods for every four (4) hours worked or major fraction thereof. As

1 explained above, any purported rest periods were late, interrupted, cut short, on duty, and/or
2 otherwise subject to DEFENDANTS' control due to the nature and constraints of Aggrieved
3 Employees' job duties, understaffing, and/or commentary from supervisors pressuring
4 PLAINTIFFS and Aggrieved Employees to skip rest periods completely or otherwise take non-
5 compliant rest periods.

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

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

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

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

22 **Failure to Provide Suitable Resting Facilities**

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

27 209. DEFENDANTS' locations/facilities are generally similar in layout and design, and
28 there was, and continues to be, space that allows for a resting facility that employees may use to

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

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

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

13 **Minimum and Overtime Wage Violations**

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

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

27 214. As explained above, DEFENDANTS violated California's minimum and overtime
28 wage laws by failing to compensate PLAINTIFFS and the Aggrieved Employees for all hours

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

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

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

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

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

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

1 **Statutory Wage Violations**

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

13 **Refusal to Make Payment**

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

22 **Standard Conditions of Labor Violations**

23 222. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
24 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
25 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
26

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

1 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
2 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
3 minimum/overtime wages and other violations described herein result in separate violations of
4 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
5 1197.1 and 2699.

6 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

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

17 **Wage Statement Violations**

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

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

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

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

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

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

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

1 DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee, in violation of Labor
3 Code section 226(a)(9) due to DEFENDANTS' failure to list an overtime rate category at all and/or
4 failure to list a category containing the proper overtime rate.

5 238. Separately, and independent from the above allegations, based on information and
6 belief, DEFENDANTS issued wage statements to PLAINTIFFS 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.

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

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

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

21 242. DEFENDANTS' failure to accurately list all hours worked on all wage statements
22 caused confusion to PLAINTIFFS and caused and continues to cause confusion to other Aggrieved
23 Employees over whether they received all wages owed to them.

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

27 244. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
28 address of the legal entity that is the employer, PLAINTIFFS and Aggrieved Employees have

1 suffered injury as they could not contact their employer regarding any question(s) they had about
2 wages paid.

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

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

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

17 **Unlawful Deductions**

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

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

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

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

3 **Reporting Time Pay Violations.**

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

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

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

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

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

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

28 255. Based on information and belief, DEFENDANTS have and continue to have a

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

6 **Seating Violations**

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

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

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

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

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

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

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

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

8 **Sick Leave Violations**

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

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

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

25 265. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
26 documenting the hours worked and paid sick days accrued and used by PLAINTIFFS and all
27 Aggrieved Employees, permitting the presumption that PLAINTIFFS and all Aggrieved Employees
28 were entitled to the maximum number of hours accruable.

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

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

7 268. On information and belief, PLAINTIFFS alleges that all of these practices were
8 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

24 **Untimely Payment of Final Wages**

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

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

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

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

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

19 **Violation of Labor Code Section 208**

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

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

1 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

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

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

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

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

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

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

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

20 Unlawful Inquires into Criminal History

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

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

1 application in violation of California law.

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

7 Unlawful PAGA Waiver

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

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

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

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

27 293. Under the provisions of PAGA and the above mentioned Labor Code sections,
28 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,

1 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
2 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
3 interpretations of these laws by California Courts and administrative bodies, as well as any other
4 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF

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

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

Dated: March 1, 2024

CROSNER LEGAL, PC

By: 

Jamie Serb, Esq.
Sepideh Ardestani, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiffs