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

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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By: Maria Rubio, DEPUTY

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

12 BRYAN RAGONE, on behalf of the State of
13 California and all Aggrieved Employees,

14 Plaintiff,

15 v.
16

17 U.S. AVIATION SERVICES CORP., a
Nevada Corporation; UNITED SERVICE
18 COMPANIES, INC., an Illinois
Corporation; and DOES 1-100, inclusive,

19 Defendants.
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Case No.: CIVSB2411967

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

1 Plaintiff, BRYAN RAGONE, (“PLAINTIFF”), on behalf of the State of California, and all
2 other Aggrieved Employees (as defined below), hereby files this Complaint against Defendants U.S.
3 AVIATION SERVICES CORP., a Nevada Corporation; UNITED SERVICE COMPANIES, INC.,
4 an Illinois Corporation; and DOES 1-100, inclusive, (collectively referred to herein as
5 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

23 **THE PARTIES**

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

26 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
27 DEFENDANTS as a non-exempt employee with a job title(s) of baggage handler and/or/ ramp agent
28 and/or a similar title(s) and/or job position(s) from in or around December 2022 through in or around

1 December 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Ontario, California
2 location(s).

3 6. Defendant U.S. AVIATION SERVICES CORP. is a Nevada Corporation that, at all
4 relevant times, was authorized to do business within the State of California and is doing business in
5 the State of California.

6 7. Defendant UNITED SERVICE COMPANIES, INC. is an Illinois Corporation that,
7 at all relevant times, was authorized to do business within the State of California and is doing
8 business in the State of California.

9 8. DEFENDANTS own, operate, manage and/or staff its employees to work at the
10 airport facilities and/or other facilities and/or other location(s) in California, including but not
11 limited to, the airport facilities and/or other facilities in Ontario, California. DEFENDANTS,
12 through its various s/other locations, serves the aviation and/or consumer services industry.

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

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

1 **JOINT LIABILITY**

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

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

26 13. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
27 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
28 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices

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

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

17 15. For example, DEFENDANTS' website identifies both "U.S. Aviation Services
18 Corp." and "United Service Companies." Also, per DEFENDANTS' website, United Service
19 Companies' corporate headquarters address is the same as U.S. Aviation Services Corp.'s principal
20 place of business as provided to the California Secretary of State. Also, DEFENDANTS, and each
21 of them, maintain the same agent for service of process as provided to the California Secretary of
22 State and/or the Secretary of State of the State of Incorporation. Moreover, based on information
23 and belief, DEFENDANTS use some of the same human resources personnel and/or attorneys to
24 oversee employment-related matters.

25 16. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
26 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
27 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
28 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved

1 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
2 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively
3 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of
4 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
5 and other Aggrieved Employees' employment with or without cause. Upon information and belief,
6 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
7 writing the details of their compensation, and the manner in which they were to take meal and rest
8 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
9 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
10 collectively would evaluate their wage rates.

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

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

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

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

1 **PAGA ALLEGATIONS**

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

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

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

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

22 23. PLAINTIFF, on January 29, 2024, through counsel, gave written notice by online
23 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
24 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
25 in this Complaint (“PAGA Notice”).

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

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

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

FACTUAL ALLEGATIONS

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

28. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title(s) of baggage handler and/or/ ramp agent and/or a similar title(s) and/or job position(s) from in or around December 2022 through in or around December 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Ontario, California location(s). PLAINTIFF regularly worked seven and one-half (7 ½) hours per day.

29. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked.

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

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

1 below.

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

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

12 34. For example, PLAINTIFF was frequently required to respond to work-related calls
13 and/or messages before clocking in for the start of his shift and/or after clocking out for the end of
14 his shift and/or during unpaid meal periods and/or otherwise outside his scheduled shifts, resulting
15 in DEFENDANTS' failure to compensate PLAINTIFF for all work time and the underpayment of
16 wages owed to PLAINTIFF.

17 35. Based on information and belief, DEFENDANTS have a policy and practice of
18 requiring Aggrieved Employees to also perform work tasks outside of scheduled shift times and/or
19 during unpaid meal periods, including but not limited to, responding to work-related
20 communications and/or completing other off-the-clock work tasks.

21 36. For example, based on information and belief, DEFENDANTS required Aggrieved
22 Employees to be at their assigned workstations at the start of a scheduled shift, thereby forcing
23 Aggrieved Employees to gather work-related equipment and/or safety gear, make any necessary
24 adjustments to tools/equipment and/or perform maintenance/cleaning tasks, don work
25 clothing/uniforms and/or protective equipment, and/or complete other work tasks prior to their
26 scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock
27 work.

28 37. Based on information and belief, at times, Aggrieved Employees were required to

1 stand in line behind other employees to access DEFENDANTS' time-keeping system and/or were
2 required to spend time reinitiating DEFENDANTS' time-keeping system before they could clock
3 in for the start of their shifts and/or after completing a purported meal period.

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

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

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

20 41. Based on information and belief, at times, DEFENDANTS' electronic employee
21 time-keeping system/app malfunctioned such that Aggrieved Employees were required to either
22 reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable
23 to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-
24 the-clock work and the underpayment of wages owed to Aggrieved Employees.

25 42. Based on information and belief, Aggrieved Employees experienced the same issues
26 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
27 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
28 Aggrieved Employees.

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

4 44. Based on information and belief, DEFENDANTS required Aggrieved Employees to
5 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
6 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.
7 Based on information and belief, Aggrieved Employees were also pressured to complete at least
8 some additional work tasks off-the-clock in order to meet DEFENDANTS' goals and expectations.

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

15 46. Based on information and belief, DEFENDANTS failed to pay Aggrieved
16 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
17 Employee worked in California.

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

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

27 49. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
28 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal

1 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
2 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
3 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
4 forty (40) hours in a week.

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

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

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

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

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

1 take late meal periods in order to complete assigned job duties.

2 55. Based on information and belief, Aggrieved Employees were frequently interrupted
3 during purported meal periods and/or had meal periods cut short and/or restricted to
4 DEFENDANTS' premises due to the need to continue assigned job duties.

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

10 57. Based on information and belief, DEFENDANTS implemented policies and/or
11 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
12 during unpaid meal periods.

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

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

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

25 61. For example, when PLAINTIFF worked more than ten (10) and/or twelve (12) hours
26 in a shift, PLAINTIFF was at times denied a compliant second meal period.

27 62. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
28 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further

1 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
2 did DEFENDANTS have any sort of compliant policy in practice.

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

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

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

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

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

28 68. Based on information and belief, DEFENDANTS did not have a have a compliant

1 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
2 practice.

3 69. For example, based on information and belief, Aggrieved Employees were frequently
4 if not always unable to take compliant rest periods due to their need to complete assigned job duties
5 and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported
6 rest periods restricted to DEFENDANTS' premises.

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

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

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

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

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

26 75. **Cooldown Recovery Period Violations:** California Code of Regulations, Title 8,
27 section 3395 mandates that all employers with "outdoor places of employment" implement a heat
28 illness prevention program that includes, among other requirements, providing workers "cool-

1 down” periods of at least five minutes in the shade. Specifically, section 3395 provides that
2 “employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of
3 no less than five minutes at a time when they feel the need to do so to protect themselves from
4 overheating” and that “such access to shade shall be permitted at all times.” Under California Labor
5 Code section 226.7, if an employer fails to provide an employee a recovery period, the employer
6 shall pay the employee one additional hour of pay at the employee’s regular rate of compensation
7 for each workday that the meal or rest or recovery period is not provided.

8 76. Based on information and belief, Aggrieved Employees were required to spend
9 multiple hours at a time outdoors in significantly high temperature heat conditions. DEFENDANTS
10 failed to provide proper heat illness prevention training and/or heat illness
11 policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8
12 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
13 California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
14 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
15 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
16 shade for extended periods of time. In addition, DEFENDANTS, failed to pay Aggrieved
17 Employees with an additional hour of pay at their respective regular rate(s) of pay for each missed
18 cooldown recovery period.

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

23 78. DEFENDANTS’ locations/facilities are generally similar in layout and design, and
24 there was, and continues to be, space that allows for a resting facility that employees may use to
25 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
26 Employees with a resting facility within DEFENDANTS’ facilities/locations with reasonable or no
27 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a
28 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to

1 resting, including but not limited to leaning up against the wall, or search for facilities outside of
2 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
3 vehicles.

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

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

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

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

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

28 84. Based on information and belief, wage statements issued by DEFENDANTS failed

1 to list all applicable hourly rates in effect during the pay period and the corresponding number of
2 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
3 Code section 226(a)(9).

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

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

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

15 88. For example, based on information and belief, at times, DEFENDANTS issued wage
16 statements to Aggrieved Employees containing payment for hours worked during previous pay
17 periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate
18 pay period for that retroactive pay, further failing to list the total hours worked for the pay period,
19 including but not limited to, the total hours worked for the pay period the retroactive pay corresponds
20 with, in violation of including but not limited to, Labor Code section 226(a)(2) and/or Labor Code
21 section 226(a)(6).

22 89. Based on information and belief, DEFENDANTS failed to accurately list all
23 deductions on wage statements issued to Aggrieved Employees, in violation of including but not
24 limited to, Labor Code section 226(a)(4).

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

28 91. Based on further information and belief, DEFENDANTS issued wage statements to

1 Aggrieved Employees that failed to list the accurate total hours worked whenever shift differential
2 wages were paid in violation of Labor Code section 226.

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

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

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

22 95. DEFENDANTS have failed and continue to fail to keep accurate and complete
23 records showing total hours worked by virtue of DEFENDANTS’ time rounding, automatic meal
24 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
25 employer control during unpaid meal periods, failure to record the true start and end times of meal
26 periods, shift start times and shift end times, and other off-the-clock work policies and practices
27 described herein.

28 96. **Unreimbursed Business Expenses.** Based on information and belief,
19
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

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

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

16 99. For example, PLAINTIFF was required to use his personal cell phone / mobile device
17 for work, including but not limited to, for responding to off-the-clock work-related calls and/or
18 messages from PLAINTIFF's manager(s), without being provided any and/or full reimbursement
19 from DEFENDANTS for the business expenses PLAINTIFF incurred in connection with being
20 required to use his personal cell phone/mobile device for work.

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

25 101. For example, PLAINTIFF was required to purchase his own steel toe boots and/or
26 protective eyewear and/or gloves and/or sunscreen and/or water and/or hearing protection and/or
27 other uniforms and/or work clothing and/or work shoes/boots and/or protective and/or safety gear
28 and/or hand tools and/or work equipment required to carry out his assigned job duties, however,

1 DEFENDANTS did not reimburse PLAINTIFF at all and/or in full for the business expenses
2 PLAINTIFF incurred in connection with the purchase and/or maintenance of DEFENDANTS'
3 required uniforms and/or work clothing and/or work shoes/boots and/or protective and/or safety
4 gear and/or hand tools and/or work equipment.

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

11 103. As explained above, based on information and belief, Aggrieved Employees were
12 not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost
13 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
14 protective/safety gear and/or hand tools and/or other work equipment required to carry out their
15 assigned job duties.

16 104. Based on information and belief, DEFENDANTS regularly failed to reimburse and
17 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
18 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
19 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
20 assigned by DEFENDANTS.

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

25 106. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
26 provides as follows:

27 107. (A) Each workday an employee is required to report for work and does report, but is
28 not put to work or is furnished less than half said employee's usual or scheduled day's work, the

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

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

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

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

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

28 112. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed

1 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
2 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the
3 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
4 accrued sick leave hours on the correct number of hours worked (as a result of the
5 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
6 times/other required off-the-clock work including but not limited to unpaid meal periods) and by
7 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
8 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
9 compensation into the sick leave pay rate calculation.

10 113. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
11 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
12 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
13 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
14 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
15 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
16 used sick leave and the balance of paid sick leave.

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

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

28 116. As such, DEFENDANTS have violated California's paid sick leave laws and

1 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
2 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These
3 unlawful practices and policies violate Labor Code sections 245-248.5.

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

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

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

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

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

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

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

27 **122. Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
28 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow

1 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
2 failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation
3 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
4 limited to, shift differentials) to Aggrieved Employees upon separation of employment, in violation
5 of California law, including but not limited to, Labor Code section 227.3.

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

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

18 **125.** For example, DEFENDANTS did not furnish PLAINTIFF with any final paycheck
19 until at least approximately four (4) days following the separation of PLAINTIFF's employment,
20 and PLAINTIFF's late final paycheck is devoid of all wages owed, including but not limited to, all
21 owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or
22 paid time off wages at the properly accrued rates (including but not limited to, all owed vacation
23 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
24 limited to, any shift differentials).

25 **126.** Based on further information and belief, DEFENDANTS failed to timely provide all
26 owed wages immediately upon discharge of employment. Based on information and belief, at times,
27 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
28 Aggrieved Employees would not be called in for work for longer than a single pay period due to

1 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
2 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
3 the end of such periods of employment, in violation of including but not limited to Labor Code
4 section 201-202.

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

9 128. Based on information and belief, DEFENDANTS have a policy and practice of
10 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
11 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
12 office or agency of DEFENDANTS in the county where the work was performed, in violation of
13 Labor Code Section 208.

14 129. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

15 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

16 130. Based on information and belief, DEFENDANTS required Aggrieved Employees to
17 agree in writing to unlawful conditions of employment including but not limited to unlawful
18 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
19 violation of Labor Code section 432.5.

20 131. Based on information and belief, DEFENDANTS ordered unlawful financial credit
21 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
22 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
23 employment, in violation of California and Federal law, which results in a further violation of Labor
24 Code section 432.5.

25 132. Based on information and belief, DEFENDANTS also required Aggrieved
26 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
27 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
28 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit

1 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
2 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
3 FCRA when conducting background screenings for applicants, including but not limited to
4 Aggrieved Employees that were subject to a background check as a condition of employment during
5 the application phase.

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

16 134. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
17 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
18 section 432.5.

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

24 136. Based on further information and belief, DEFENDANTS knew that requiring
25 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
26 condition of obtaining and/or holding employment was unlawful.

27 137. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
28 condition of employment, DEFENDANTS violated Labor Code section 432.5.

1 Unlawful Inquires into Criminal History

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

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

11 Unlawful PAGA Waiver

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

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

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

26 143. Upon information and belief, DEFENDANTS required Aggrieved Employees to
27 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
28 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS

1 required written agreement to an unlawful provision as a condition of employment which is a
2 violation of labor code section 432.5.

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

10 145. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
11 engaged in these same herein described unlawful practices, which led to violations of the California
12 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
13 unlawful practices to all of its employees that it applied to PLAINTIFF.

14
15 **FIRST CAUSE OF ACTION**
16 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
17 **2698, *ET SEQ.***
18 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
19 **Defendants)**

20 146. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

21 **Failure to Keep Accurate Records**

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

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

1 149. DEFENDANTS' failure to keep "accurate and complete" payroll records for
2 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
3 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
4 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
5 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
6 period during which the referenced statutes and Wage Order provisions were violated.¹

7 **Meal Period Violations**

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

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

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

24 153. Employers must pay employees an additional hour of wages at the employees'

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

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

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

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

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

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

28 159. These unlawful meal period policies and practices result in violations of Labor Code
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1 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
2 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
3 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
4 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

5 **Rest Period Violations**

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

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

1 periods] to its employees.”).

2 162. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
3 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
4 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
5 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
6 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
7 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

24 **Cooldown Recovery Period Violations**

25 167. California Code of Regulations, Title 8, section 3395 mandates that all employers
26 with “outdoor places of employment” implement a heat illness prevention program that includes,
27 among other requirements, providing workers “cool-down” periods of at least five minutes in the
28 shade. Specifically, section 3395 provides that “employees shall be allowed and encouraged to take

1 a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the
2 need to do so to protect themselves from overheating” and that “such access to shade shall be
3 permitted at all times.” Under California Labor Code section 226.7, if an employer fails to provide
4 an employee a recovery period, the employer shall pay the employee one additional hour of pay at
5 the employee’s regular rate of compensation for each workday that the meal or rest or recovery
6 period is not provided.

7 168. Based on information and belief, Aggrieved Employees were required to spend
8 multiple hours at a time outdoors in significantly high temperature heat conditions. DEFENDANTS
9 failed to provide proper heat illness prevention training and/or heat illness
10 policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8
11 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
12 California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
13 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
14 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
15 shade for extended periods of time. In addition, DEFENDANTS, failed to pay Aggrieved
16 Employees with an additional hour of pay at their respective regular rate(s) of pay for each missed
17 cooldown recovery period.

18 **Failure to Provide Suitable Resting Facilities**

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

23 170. DEFENDANTS’ locations/facilities are generally similar in layout and design, and
24 there was, and continues to be, space that allows for a resting facility that employees may use to
25 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
26 Employees with a resting facility within DEFENDANTS’ facilities/locations with reasonable or no
27 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a
28 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to

1 resting, including but not limited to leaning up against the wall, or search for facilities outside of
2 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
3 vehicles.

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

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

9 **Minimum and Overtime Wage Violations**

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

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

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

1 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

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

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

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

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

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

25 **Statutory Wage Violations**

26 181. California Labor Code section 223 makes it unlawful for an employer to secretly pay
27 wages lower than required by statute while purporting to pay legal wages. As described above,
28 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all

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

9 **Refusal to Make Payment**

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

18 **Standard Conditions of Labor Violations**

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

26 _____
27 ² 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 1197.1 and 2699.

2 **Business Expense Violations**

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

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

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

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

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

27 189. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
28 Employees have suffered injury in that they were not completely reimbursed as mandated by

1 California law.

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

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

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

13 **Wage Statement Violations**

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

23 194. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
24 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
25 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
26 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
27 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
28 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in

1 effect during the pay period and the corresponding number of hours worked at each hourly rate by
2 the employee, in violation of Labor Code section 226(a)(9).

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

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

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

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

28 199. Based on information and belief, wage statements issued by DEFENDANTS failed

1 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid.

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

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

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

11 203. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
12 Aggrieved Employees with accurate, itemized wage statements.

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

22 205. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
23 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
24 during which the statute provisions were violated. ³

25 **Unlawful Deductions**

26 206. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
27 an employee any part of wages theretofore paid by said employer to said employee." Based on

28 ³ Labor Code § 226.3 (establishing that the civil penalty is ~~4~~ ¹ per employee per violation").

1 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
2 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
3 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
4 Section 2699.

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

11 **Reporting Time Pay Violations**

12 208. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

26 211. Based on information and belief, DEFENDANTS have a policy and practice of
27 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
28 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS’ failure to

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

4 **Violation of California Day of Rest Law**

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

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

15 **Seating Violations**

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

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

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

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

26 216. Suitable seating is one of the worker protections covered by California's Wage
27 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
28 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*

1 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

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

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

17 **Sick Leave Violations**

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

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

1 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

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

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

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

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

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

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

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

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

1 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
2 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
3 to Aggrieved Employees upon separation of employment, in violation of California law, including
4 but not limited to, Labor Code section 227.3.

5 **Untimely Payment of Final Wages**

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

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

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

25 233. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
26 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
27 256.

1 **Violation of Labor Code Section 208**

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

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

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

12 236. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
13 require any employee or applicant for employment to agree, in writing, to any term or condition
14 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
15 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
16 conditions of employment including but not limited to unlawful criminal and/or financial checks as
17 a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

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

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

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

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

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

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

19 Unlawful Inquires into Criminal History

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

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

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

6 Unlawful PAGA Waiver

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

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

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

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

26 Violation of Labor Code Section 432.6

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

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

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

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

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

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

16 255. Under the provisions of PAGA and the above mentioned Labor Code sections,
17 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
18 226.7, 227.3, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 512, 551, 552, 558, 558.1, 1174,
19 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable
20 Wage Orders as well as all interpretations of these laws by California Courts and administrative
21 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
22 the following penalties:

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

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

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

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PRAYER FOR RELIEF

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

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

Dated: April 9, 2024

CROSNER LEGAL, PC

By: 

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