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8 Attorneys for Plaintiff LAURA TIZNADO,
on behalf of the State of California
9 and all Aggrieved Employees

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF MONTEREY**

12 LAURA TIZNADO, on behalf of the State of
California and all Aggrieved Employees,

13 Plaintiff,

14 v.
15

16 CB HARVESTING, LLC, a California
17 Limited Liability Company; CHURCH
BROTHERS, LLC, a California Limited
18 Liability Company; and DOES 1-100,
inclusive,

19 Defendants.
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Case No.: 24CV001374

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

1 Plaintiff, LAURA TIZNADO, (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants CB
3 HARVESTING, LLC, a California Limited Liability Company; CHURCH BROTHERS, LLC, a
4 California Limited Liability Company; and DOES 1-100, inclusive, (collectively referred to herein
5 as “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 all Aggrieved
8 Employees and the State of California against DEFENDANTS, pursuant to California’s Private
9 Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties (75%
10 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 Monterey pursuant to
16 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within
17 this judicial district, DEFENDANTS maintain a principal place of business in this judicial district,
18 and conduct alleged by PLAINTIFF herein occurred in this this judicial district. *See also Crestwood*
19 *Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is
20 proper in any county where the defendants committed Labor Code violations against some of its
21 employees). Venue is also proper pursuant to section 393 of the California Code of Civil Procedure
22 because the cause, or some part of the cause, arose in the County of Monterey.

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 of general laborer and/or a similar title(s)
28 and/or job position(s) from in or around 2021 through on or around late April 2023. PLAINTIFF

1 worked for DEFENDANTS at DEFENDANTS' Salinas and/or Imperial Valley location(s) in
2 California.

3 6. Defendant CB HARVESTING, LLC is a California Limited Liability Company that,
4 at all relevant times, was authorized to do business within the State of California and is doing
5 business in the State of California.

6 7. Defendant CHURCH BROTHERS, LLC is a California Limited Liability Company
7 that, 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 farms, processing facilities and/or other facilities and/or other location(s) in California, including
11 but not limited to the farm(s), processing facilities and/or other facilities in Salinas, California.
12 DEFENDANTS, through its various locations serve the agricultural industry.¹

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 ¹ See <https://www.churchbrothers.com/>. Last visited on April 1, 2024.

1 controlled, aided and abetted the conduct of all other Defendants.

2 **JOINT LIABILITY**

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

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

27 13. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
28 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized

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

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

18 15. For example, based on information and belief, DEFENDANTS, and each of them,
19 maintain the same individual agent for service of process and/or principal business office and/or
20 mailing address as provided to the California Secretary of State. Based on further information and
21 belief, DEFENDANTS, and each of them, use some of the same attorneys and/or human resources
22 personnel to oversee employment-related matters.

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

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

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

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

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

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

26 **PAGA ALLEGATIONS**

27 21. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
28 of the State of California and all Aggrieved Employees, regarding violations of the California Labor

1 Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

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

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

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

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

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

26 25. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
27 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
28 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.

1 PLAINTIFF has exhausted the administrative remedies as required by Labor Code section 2699.3.
2 Consequently, PLAINTIFF's right to file the instant lawsuit has duly accrued.

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

6 FACTUAL ALLEGATIONS

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

11 28. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
12 DEFENDANTS as a non-exempt employee with a job title of general laborer and/or a similar title(s)
13 and/or job position(s) from in or around 2021 through in or around late April 2023. PLAINTIFF
14 worked for DEFENDANTS at DEFENDANTS' California locations(s). PLAINTIFF regularly
15 worked at least approximately eight (8) hours per day, often working more than ten (10) hours per
16 day. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours
17 worked. Based on information and belief, PLAINTIFF also earned piece-rate compensation and/or
18 other non-discretionary compensation.

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

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

28 31. Based on information and belief, DEFENDANTS implemented a policy and/or

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

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

10 33. Based on information and belief, DEFENDANTS engaged in systemic time record
11 manipulation to shave time worked off PLAINTIFF and other Aggrieved Employees' workdays,
12 by, for example, editing written and/or electronic time records to delete portions of total hours
13 worked or otherwise understating actual hours worked by PLAINTIFF and other Aggrieved
14 Employees even though DEFENDANTS had actual and/or constructive knowledge that
15 PLAINTIFF and other Aggrieved Employees were consistently required to perform pre-shift and/or
16 post-shift off-the-clock work and/or otherwise perform work off-the-clock outside of scheduled
17 hours.

18 34. For example, based on information and belief, Aggrieved Employees were required
19 to be at their field areas/respective workstations at their scheduled shift start time or face discipline.
20 As such, Aggrieved Employees typically arrived at work at least five (5) minutes prior to their
21 scheduled shift start times each day so that they could perform any required pre-shift work, including
22 but not limited to, bestowing their personal items in the employee storage area, retrieving/compiling
23 their work tools/equipment (e.g., knives, scissors, baskets/containers, tractors, agricultural trucks)
24 making any necessary adjustments to their tools/equipment and/or perform any required
25 maintenance tasks, cleaning and/or maintaining their workspace(s) and/or work area(s), don work
26 clothing/their uniforms and protective equipment (aprons, gloves, hairnets and/or face masks),
27 and/or complete other work tasks so as to be ready to be at their respective work stations at their
28 scheduled shift start times as mandated by DEFENDANTS. This pre-shift off-the-clock work was

1 neither recorded nor compensated resulting in DEFENDANTS' failure to compensate Aggrieved
2 Employees for all hours worked and the underpayment of wages owed to Aggrieved Employees.

3 35. For example, PLAINTIFF was typically required to complete work tasks off-the-
4 clock prior to the start of her scheduled shift each day, including but not limited to, setting up her
5 workstation for picking produce and/or completing other off-the-clock work tasks that were neither
6 recorded nor compensated by DEFENDANTS resulting in DEFENDANTS' failure to compensate
7 PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF.

8 36. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
9 also required to perform post-shift off-the-clock work that was neither recorded nor compensated.

10 37. For example, based on information and belief, Aggrieved Employees put away their
11 work tools/equipment and/or cleaned and/or maintained their work station(s)/area(s) and/or changed
12 out of their work clothing/uniform(s) and/or protective gear after the end time of their scheduled
13 shifts and/or outside of their scheduled shift times.

14 38. Based on information and belief, DEFENDANTS did not compensate Aggrieved
15 Employees for time spent donning and doffing personal protective equipment, safety equipment
16 and/or uniforms/work clothing (e.g., aprons, gloves, hairnets and/or face masks) during meal
17 periods, rest periods, before the start of a scheduled shift, and/or after completing a scheduled shift.

18 39. Based on information and belief, DEFENDANTS also required Aggrieved
19 Employees to wash their hands before clocking in /signing in for their shifts, during rest periods
20 and/or before clocking back in from meal periods, resulting in off-the-clock work and unpaid
21 minimum wages and unpaid overtime wages as well as meal and rest period violations.

22 40. In addition, based on information and belief, DEFENDANTS required Aggrieved
23 Employees to obtain Covid-related testing outside of their scheduled shift times without
24 compensating them for the time spent completing DEFENDANTS' testing requirements.

25 41. Based on information and belief, Aggrieved Employees were required to undergo
26 pre-shift/off-the-clock temperature screenings and/or answer screening questions related to COVID-
27 19, which resulted in at least a few minutes of off-the-clock work. This off-the-clock work was
28 uncompensated and resulted in unpaid wages.

1 42. Moreover, based on information and belief, at times, DEFENDANTS paid
2 Aggrieved Employees on a strictly piece-rate basis (e.g., per unit created and/or harvested), at least
3 during some pay periods, during the relevant time period. However, based on information and belief,
4 DEFENDANTS failed to separately compensate Aggrieved Employees for all non-piece rate related
5 activities/all non-productive time, including but not limited to, all rest breaks and/or time spent
6 preparing/setting up for tasks, waiting between jobs and tasks and/or other waiting time, and/or
7 performing work duties that otherwise fall outside of the piece-rate pay criteria. DEFENDANTS'
8 failure to separately compensate Aggrieved Employees for their rest periods and/or other non-
9 productive time and/or failure to compensate them at the correct rates for all non-productive time
10 including rest periods resulted in the failure to pay Aggrieved Employees for all hours worked and
11 violations of California wage and hour laws, including but not limited to, Labor Code sections 226.2
12 and/or 1197. Based on information and belief, DEFENDANTS further failed to include this
13 information on these employees' wage statements required by Labor Code section 226.2.

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

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

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

26 46. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
27 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
28 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of

1 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
2 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
3 forty (40) hours in a week.

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

9 48. Section 3(A)(1) of IWC Wage Order No. 14, applicable to agricultural occupations,
10 provides in pertinent part as follow:

11 49. (A) The following overtime provisions are applicable to employees eighteen (18)
12 years of age or over and to employees sixteen (16) or seventeen (17) years of age who are not
13 required by law to attend school:

14 50. (1) Such employees shall not be employed more than ten (10) hours in any one
15 workday or more than six (6) days in any workweek unless the employee receives one and one-half
16 (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any
17 workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's
18 regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the
19 workweek.

20 51. (2) For employers of more than 25 employees:

21 52. (a) Starting January 1, 2019, an employee shall not be employed more than nine and
22 one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee
23 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked
24 over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in anyone
25 workweek.

26 53. (b) Starting January 1, 2020, an employee shall not be employed more than nine (9)
27 hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half
28 (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any

1 one workday or more than fifty (50) hours in any one workweek.

2 54. (c) Starting January 1, 2021, an employee shall not be employed more than eight and
3 one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee
4 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked
5 over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any
6 one workweek.

7 55. (d) Starting January 1, 2022, an employee shall not be employed more than eight (8)
8 hours per workday or work in excess of forty (40) hours per workweek unless the employee receives
9 one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight
10 (8) hours in any workday or more than forty (40) hours in any workweek and double the employee's
11 regular rate of pay for all hours worked over twelve (12) hours in any one workday.

12 56. (3) For employers of 25 or fewer employees:

13 57. (a) Starting January 1, 2022, the overtime standards and compensation in subsection
14 (2)(a) above, shall apply to any employee who works over the specified threshold hours in any one
15 workday or workweek.

16 58. (b) Starting January 1, 2023, the overtime standards and compensation in subsection
17 (2)(b) above, shall apply to any employee who works over the specified threshold hours in any one
18 workday or workweek.

19 59. (c) Starting January 1, 2024, the overtime standards and compensation in subsection
20 (2)(c) above, shall apply to any employee who works over the specified threshold hours in any one
21 workday or workweek.

22 60. (d) Starting January 1, 2025, the overtime standards and compensation in subsection
23 (2)(d) above, shall apply to any employee who works over the specified numbers of hours in any
24 one workday or workweek.

25 61. Based on information and belief, DEFENDANTS employed more than twenty-five
26 (25) employees during the relevant period

27 62. Based on information and belief, DEFENDANTS failed and continue to fail to pay
28 a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours

1 in a week and/or in accordance with California law, including but not limited to, the applicable IWC
2 Wage Orders, including but not limited to, Wage Order 14.

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

7 64. Based on information and belief, DEFENDANTS sometimes paid Aggrieved
8 Employees multiple rates of base pay in one workweek but failed to incorporate all multiple rates
9 of base pay into the regular rate of pay for purposes of calculating the owed overtime rate.

10 65. For example, on information and belief, at times, Aggrieved Employees earned
11 multiple base pay rates during the same workweek, yet DEFENDANTS failed to incorporate
12 all/both base pay rates into the regular rate of pay for purposes of calculating the owed overtime
13 rate, resulting in the miscalculation and underpayment of overtime wages owed to Aggrieved
14 Employees.

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

20 67. For example, based on information and belief, at times, PLAINTIFF and other
21 Aggrieved Employees earned non-discretionary bonuses/incentive pay and/or piece-rate pay and/or
22 other non-discretionary compensation during pay periods in which they worked overtime, however,
23 DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate(s) of
24 pay for purposes of calculating the owed overtime rate(s), resulting in the miscalculation and
25 underpayment of overtime wages owed to PLAINTIFF and other Aggrieved Employees, further
26 resulting in wage statement violations, described herein.

27 68. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
28 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.

1 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
2 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
3 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
4 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
5 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
6 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
7 completely.

8 69. For example, based on information and belief, Aggrieved Employees were forced to
9 take late meal periods in order to complete assigned job duties. Based on information and belief,
10 Aggrieved Employees were frequently interrupted during purported meal periods, required to work
11 through their meal periods completely and/or had meal periods cut short and/or restricted to
12 DEFENDANTS' premises due to the need to continue assigned job duties.

13 70. For example, based on information and belief, PLAINTIFF was frequently required
14 to take late meal periods, cut her meal periods short, take interrupted meal periods and/or work
15 through her meal periods completely due to the need to complete assigned job duties.

16 71. Based on information and belief, DEFENDANTS did not require PLAINTIFF and
17 other Aggrieved Employees to clock out for meal periods and DEFENDANTS did not record the
18 true start and end times of PLAINTIFF's and other Aggrieved Employees' meal periods. Instead,
19 DEFENDANTS performed an automatic meal period deduction of at least thirty minutes per shift
20 for each NON-EXEMPT AGGRIEVED EMPLOYEE notwithstanding that DEFENDANTS had
21 actual and/or constructive knowledge that PLAINTIFF and other Aggrieved Employees were
22 required to complete work tasks during unpaid meal periods, resulting in denied meal periods as
23 well as DEFENDANTS' failure to compensate PLAINTIFF and other Aggrieved Employees for all
24 hours worked and the underpayment of wages owed to PLAINTIFF and other Aggrieved
25 Employees.

26 72. Based on information and belief, other Aggrieved Employees were consistently
27 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
28 interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing,

1 the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and
2 expectations.

3 73. Based on information and belief, DEFENDANTS implemented policies and/or
4 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
5 during unpaid meal periods.

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

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

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

18 77. For example, when PLAINTIFF worked more than ten (10) and/or twelve (12) hours
19 in a shift, PLAINTIFF was not provided with a second meal period.

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

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

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

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

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

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

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

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

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

28 86. For example, based on information and belief, PLAINTIFF was frequently if not

1 always unable to take compliant rest periods due to PLAINTIFF's need to complete assigned job
2 duties and/or was unable to take a net ten-minute rest period in a suitable rest area and/or had
3 purported rest periods restricted to DEFENDANTS' premises.

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

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

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

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

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

23 92. **Cooldown Recovery Period Violations.** California Code of Regulations, Title 8,
24 section 3395 mandates that all employers with "outdoor places of employment" implement a heat
25 illness prevention program that includes, among other requirements, providing workers "cool-
26 down" periods of at least five minutes in the shade. Specifically, section 3395 provides that
27 "employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of
28 no less than five minutes at a time when they feel the need to do so to protect themselves from

1 overheating” and that “such access to shade shall be permitted at all times.” Under California Labor
2 Code section 226.7, if an employer fails to provide an employee a recovery period, the employer
3 shall pay the employee one additional hour of pay at the employee’s regular rate of compensation
4 for each workday that the meal or rest or recovery period is not provided.

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

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

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

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

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

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

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

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

26 101. For example, as described herein, based on information and belief, DEFENDANTS
27 failed to incorporate all forms of non-discretionary compensation earned during the pay period,
28 including but not limited to, non-discretionary bonus/incentive pay, piece rate pay, multiple base

1 rates of pay and/or other non-discretionary compensation into the overtime pay rate calculation, and
2 as such, failed to display the proper overtime rate(s) for each hour of overtime worked by Aggrieved
3 Employees.

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

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

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

18 105. Based on information and belief, DEFENDANTS issued wage statements that failed
19 to list the number of piece rate units completed/earned during the pay period and the applicable rate
20 of pay for each piece rate unit.

21 106. Based on information and belief, DEFENDANTS failed to accurately list all
22 deductions on wage statements issued to Aggrieved Employees.

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

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

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

4 110. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
5 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
6 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
7 from Aggrieved Employees paychecks during the relevant period including without limitation,
8 deducting costs of uniforms and/or costs of pay cards and/or other business costs and/or deducting
9 wages for purported overpayments from previous pay periods and/or unlawfully deducting wages
10 for negligently damaged property. Such a practice is in violation of including but not limited to,
11 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
12 Section 2699.

13 111. **Failure to Produce Employment Records.** Based on information and belief,
14 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
15 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code
16 sections 226, 1198.5, 432, and/or the applicable Wage Order.

17 112. For example, PLAINTIFF, through counsel, sent a written request for payroll and
18 personnel records to DEFENDANTS on or around including but not limited to the following dates:
19 February 2, 2024. Yet, DEFENDANTS failed to timely produce complete records within the time
20 periods delineated by California labor law.

21 113. For example, DEFENDANTS failed to produce PLAINTIFF’s time records. Based
22 on information and belief, DEFENDANTS failed and continues to fail to timely produce complete
23 payroll and personnel records when requested by other Aggrieved Employees. Based on information
24 and belief, DEFENDANTS failed and continue to fail to timely produce complete time, pay, and
25 personnel records when requested by other Aggrieved Employees.

26 114. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
27 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
28 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.

1 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
2 required by law, including but not limited to the following records: total daily hours worked,
3 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
4 began and ended each work period, time records of meal periods, and accurate itemized wage
5 statements.

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

12 116. **Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an
13 employer to pay employees compensated on a piece-rate basis separately for rest and recovery
14 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an
15 employer to include on the wage statements for these employees the total hours of compensable rest
16 and recovery period, the total hours for other non-productive time, the rates of compensation for
17 these hours, and the gross wages paid for these hours. In addition, the statute requires that employees
18 shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the
19 higher of: (i) an average hourly rate determined by dividing the total compensation for the
20 workweek, exclusive of compensation for rest and recovery periods and any premium compensation
21 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,
22 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to
23 employees compensated on a commission basis.

24 117. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
25 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
26 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
27 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
28 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section

1 226.2.

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

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

13 120. For example, based on information and belief, Aggrieved Employees were required
14 to receive and respond to work-related calls and/or messages on their personal cell phones/mobile
15 devices, including but not limited to, regarding work scheduling and/or other work tasks without
16 being provided any and/or full reimbursement from DEFENDANTS for these business expenses.

17 121. Based on information, at times, Aggrieved Employees were required to supply their
18 own uniforms, work clothing/work shoes and/or safety/protective gear, such as, but not limited to,
19 work shoes, protective eyewear, gloves ear plugs protective eyewear and/or rain gear and/or face
20 masks and/or work equipment including but not limited to hand tools (e.g., scissors, shears, knives,
21 and/or blades, baskets/containers) which DEFENDANTS required, yet Aggrieved Employees were
22 not reimbursed by DEFENDANTS for the business expenses they incurred in connection therewith.

23 122. Based on information and belief, at times, DEFENDANTS failed to reimburse
24 Aggrieved Employees for expenses associated with having to purchase and/or maintain their own
25 hand tools (scissors, shears, knives, and/or blades) baskets/containers, ear plugs protective eyewear
26 and/or face masks) required to perform their assigned job duties.

27 123. For example, PLAINTIFF was required to supply her own safety gloves, blades for
28 cutting, work shoe covers and/or other uniforms, work clothing/work shoes, and/or protective and/or

1 safety gear and/or hand tools and/or other work equipment required to perform PLAINTIFF's
2 assigned job duties, however, DEFENDANTS failed to provide and/or full reimbursement from
3 DEFENDANTS for the business expenses PLAINTIFF incurred in connection therewith.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 146. For example, DEFENDANTS failed to furnish with any final paycheck for at least
12 approximately three (3) months following PLAINTIFF's separation of employment, and
13 PLAINTIFF's late final paycheck was devoid of all wages owed, including but not limited to, all
14 owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or
15 paid time off wages at the properly accrued rates (including but not limited to, all owed vacation
16 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
17 limited to, shift differentials).

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

26 148. **Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every
27 employee who is discharged shall be paid at the place of discharge, and every employee who quits
28 shall be paid at the office or agency of the employer in the county where the employee has been

1 performing labor. All payments shall be made in the manner provided by law.

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

7 150. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

8 151. Based on information and belief, DEFENDANTS required Aggrieved Employees to
9 agree in writing to unlawful conditions of employment in violation of Labor Code section 432.5.

10 152. Violation of Labor Code Section 432.6:

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

15 154. Labor Code Section 432.6(a) provides:

16 155. “[A] person shall not, as a condition of employment, continued employment, or the
17 receipt of any employment-related benefit, require any applicant for employment or any employee
18 to waive any right...”

19 156. Labor Code Section 432.6(b) provides in pertinent part:

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

22 158. Based on information and belief, DEFENDANTS require/required Aggrieved
23 Employees to waive their right to first and/or second meal periods as a condition of working for
24 DEFENDANTS. Based on further information and belief, if/when Aggrieved Employees do not
25 abide by DEFENDANTS’ policies and rules, of which this waiver is included as part of
26 DEFENDANTS’ policies/rules, said Aggrieved Employees are subject to disciplinary action, up to
27 and including termination. As such, DEFENDANTS violated including but not limited to, Labor
28 Code sections 432.6 and/or 432.5 by virtue of including but not limited to, requiring Aggrieved

1 Employees to sign invalid meal period waivers as a condition of employment and/or for threatening,
2 retaliating and/or discriminating against and/or terminating Aggrieved Employees because of their
3 refusal to waive their meal period rights. Based on information and belief, DEFENDANTS ordered
4 unlawful financial credit checks on Aggrieved Employees, in violation of Labor Code section
5 1024.5, and required Aggrieved Employees to provide ongoing written consent to the unlawful
6 credit checks as a condition of employment, in violation of California and Federal law, which results
7 in a further violation of Labor Code section 432.5.

8 159. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
9 condition of employment, DEFENDANTS violated Labor Code section 432.5.

10 Unlawful Inquires into Criminal History

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

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

20 Unlawful PAGA Waiver

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

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

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

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

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

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

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

23 **FIRST CAUSE OF ACTION**
24 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
25 **2698, ET SEQ.**
26 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
27 **Defendants)**

28 168. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

Failure to Keep Accurate Records

169. California Labor Code § 1174 requires employers to keep “accurate and complete”

1 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
2 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
3 times during which all owed meal periods were provided each day.

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

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

15 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

16 172. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
17 Orders, section 7 require that employers keep the following information on file for each employee
18 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
19 and the corresponding number of hours worked by the employee at each hourly rate, when the
20 employee begins and ends each work period (including meal periods) and split intervals; total hours
21 worked by the employee; all deductions; gross wages earned; and net wages earned.

22 173. Section (b) of Labor Code section 226 further requires employers to "afford current
23 and former employees the right to inspect or receive a copy of records pertaining to their
24 employment upon reasonable request to the employer." Section (c) of Labor Code section 226

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

1 provides that, “an employer who receives a written or oral request to inspect or receive a copy of
2 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
3 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
4 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
5 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
6 the employer. Lab. Code section 226(f).

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

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

20 **Meal Period Violations**

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

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

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

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

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

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

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

28 183. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had

1 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
2 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
3 violation of California's meal period laws.

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

9 185. These unlawful meal period policies and practices result in violations of Labor Code
10 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
11 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
12 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
13 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

14 **Rest Period Violations**

15 186. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
16 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
17 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
18 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
19 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
20 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
21 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
22 1029). The rest period requirement obligates employers to permit and authorize employees to take
23 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
24 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
25 257. If the employer fails to provide any required rest period, the employer must pay the employee
26 one hour of pay at the employee’s regular rate of compensation for each workday the employer did
27 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
28 applicable IWC Wage Order, §12(B).

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

11 188. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
12 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
13 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
14 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
15 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
16 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

24 191. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
25 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
26 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
27 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
28 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into

1 the regular rate of compensation for purposes of determining the owed rest period premium.

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

5 **Cooldown Recovery Period Violations**

6 193. California Code of Regulations, Title 8, section 3395 mandates that all employers
7 with “outdoor places of employment” implement a heat illness prevention program that includes,
8 among other requirements, providing workers “cool-down” periods of at least five minutes in the
9 shade. Specifically, section 3395 provides that “employees shall be allowed and encouraged to take
10 a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the
11 need to do so to protect themselves from overheating” and that “such access to shade shall be
12 permitted at all times.” Under California Labor Code section 226.7, if an employer fails to provide
13 an employee a recovery period, the employer shall pay the employee one additional hour of pay at
14 the employee’s regular rate of compensation for each workday that the meal or rest or recovery
15 period is not provided.

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

27 **Failure to Provide Suitable Resting Facilities**

28 195. Per section 13 of all applicable IWC Wage Orders, employees shall be provided with

1 suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities
2 shall be provided in an area separate from the toilet rooms and shall be available to employees during
3 work hours.”

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

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

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

18 **Minimum and Overtime Wage Violations**

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

26 200. California law also provides that employees in California must be paid overtime,
27 equal to 1.5 times the employee’s regular rate of pay for all hours worked in excess of 40 hours per
28 week or 8 hours per day. *See* Labor Code 510 and the applicable Wage Order section 3. Employers

1 must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond
2 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh
3 consecutive day of work in a work week. *Ibid.*

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

11 202. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
12 Aggrieved Employees for all hours worked.

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

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

23 205. Based on information and belief, DEFENDANTS further violated California's
24 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
25 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
26 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
27 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
28 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and

1 other Aggrieved Employees.

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

6 **Violation of Labor Code Section 226.2**

7 207. Labor Code section 226.2 requires an employer to pay employees compensated on a
8 piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any
9 piece-rate pay. This statute further requires an employer to include on the wage statements for these
10 employees the total hours of compensable rest and recovery period, the total hours for other non-
11 productive time, the rates of compensation for these hours, and the gross wages paid for these hours.
12 In addition, the statute requires that employees shall be compensated for rest and recovery periods at
13 a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by
14 dividing the total compensation for the workweek, exclusive of compensation for rest and recovery
15 periods and any premium compensation for overtime, by the total hours worked during the
16 workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case
17 law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

18 208. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
19 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
20 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
21 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
22 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
23 226.2.

24 **Statutory Wage Violations**

25 209. California Labor Code section 223 makes it unlawful for an employer to secretly pay
26 wages lower than required by statute while purporting to pay legal wages. As described above,
27 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
28 earned minimum and overtime compensation for all hours worked which resulted in the payment of

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

8 **Refusal to Make Payment**

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

17 **Standard Conditions of Labor Violations**

18 211. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
19 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
20 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
21 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
22 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
23 minimum/overtime wages and other violations described herein result in separate violations of
24 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
25 1197.1 and 2699.

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

1 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

12 **Wage Statement Violations**

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

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

1 the employee, in violation of Labor Code section 226(a)(9).

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

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

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

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

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

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

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

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

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

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

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

24 **Unlawful Deductions**

25 234. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
26 an employee any part of wages theretofore paid by said employer to said employee." Based on
27 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees

28 ⁴ Labor Code § 226.3 (establishing that the civil penalty is ~~40~~ per employee per violation").

1 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
2 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
3 Section 2699.

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

10 **Reporting Time Pay Violations**

11 236. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

1 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

2 **Violation of California Day of Rest Law**

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

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

13 **Seating Violations**

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

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

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

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

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

28 245. Based on information and belief, DEFENDANTS failed to provide Aggrieved

1 Employees with suitable seating, and when such employees were not engaged in duties which
2 required them to stand, no seating was placed in reasonable proximity to their workstations.

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

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

15 **Sick Leave Violations**

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

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

28 250. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
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PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
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1 their paid sick leave at least prior to their respective separations, for as on several occasions
2 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
3 compensation.

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

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

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

14 254. On information and belief, PLAINTIFF alleges that all of these practices were
15 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

26 257. Based on information and belief, DEFENDANTS had and continue to have a
27 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
28 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off

1 to Aggrieved Employees upon separation of employment, in violation of California law, including
2 but not limited to, Labor Code section 227.3.

3 **Untimely Payment of Final Wages**

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

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

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

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

26 **Violation of Labor Code Section 208**

27 262. Labor Code Section 208 provides: Every employee who is discharged shall be paid
28 at the place of discharge, and every employee who quits shall be paid at the office or agency of the

1 employer in the county where the employee has been performing labor. All payments shall be made
2 in the manner provided by law.

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

8 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

9 264. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
10 require any employee or applicant for employment to agree, in writing, to any term or condition
11 which is known by such employer...to be prohibited by law.” Based on information and belief,
12 DEFENDANTS required and continue to require Aggrieved Employees to agree in writing to
13 unlawful conditions of employment in violation of Labor Code section 432.5.

14 **Unlawful Inquires into Criminal History**

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

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

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

1 Unlawful PAGA Waiver

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

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

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

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

21 **Violation of Labor Code Section 432.6**

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

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

1 274. Labor Code Section 432.6(b) provides in pertinent part:

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

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

11 277. Under the provisions of PAGA and the above mentioned Labor Code sections,
12 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
13 226.7, 227.3, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 512, 551, 552, 558, 558.1, 1174,
14 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable
15 Wage Orders as well as all interpretations of these laws by California Courts and administrative
16 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
17 the following penalties:

- 18 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
19 relevant California Labor Code provisions listed herein only if permitted by the
20 PAGA statute, pursuant to Labor Code section 2699(a); and
21 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
22 violations without a civil penalty recoverable under the PAGA, all in the default
23 amounts provided by Labor Code section 2699(f).
24 c. The proper measure of penalties under PAGA is the number of violations,
25 whether those violations were committed as against PLAINTIFF or any
26 Aggrieved Employee, whether a party to this action or not.

27 278. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
28 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 4, 2024

CROSNER LEGAL, PC

By: 

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