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

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

11 **COUNTY OF SACRAMENTO**

12 MIKAYLA LEE, on behalf of the State of
California and all Aggrieved Employees,

13 Plaintiff,

14
15 v.

16 WEST OF CHICAGO RESTAURANTS,
17 INC., a California Corporation; and DOES
1-100, inclusive,

18 Defendants.
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Case No.: **24CV005732**

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

1 Plaintiff, MIKAYLA LEE, ("PLAINTIFF"), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants WEST
3 OF CHICAGO RESTAURANTS, INC., a California Corporation; and DOES 1-100, inclusive,
4 (collectively referred to herein as "DEFENDANTS"). PLAINTIFF is informed and believes and
5 thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
26 DEFENDANTS as a non-exempt employee with a job title(s) of hostess and/or server and/or
27 bartender and/or a similar title(s) and/or position(s) from in or around January 2019 through in or
28 around March 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Elk Grove,

1 California location(s).

2 6. Defendant WEST OF CHICAGO RESTAURANTS, INC. is a California
3 Corporation that, at all relevant times, was authorized to do business within the State of California
4 and is doing business in the State of California.

5 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
6 restaurants, bars, venues, and/or facilities and/or other location(s) in California, including but not
7 limited to the restaurants, bars, venues, and/or facilities which operate under the name “Chicago
8 Fire” and/or “Chicago Fire Pizza” located in including but not limited to, the following cities in
9 California: Elk Grove, Folsom, Meridian, Roseville, and Sacramento California. DEFENDANTS,
10 through its various locations, serve the restaurant and/or hospitality industry.¹

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

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

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28 ¹ See <https://chicagofire.com/>. Last visited on March 23, 2024.

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

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

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

1 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
2 collectively would evaluate their wage rates.

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

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

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

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

20 **PAGA ALLEGATIONS**

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

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

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

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

13 21. PLAINTIFF, on January 18, 2024, through counsel, gave written notice by online
14 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
15 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
16 in this Complaint (“PAGA Notice”).

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

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

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

1 **FACTUAL ALLEGATIONS**

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

6 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
7 DEFENDANTS as a non-exempt employee with a job title(s) of hostess and/or server and/or
8 bartender and/or a similar title(s) and/or position(s) from in or around January 2019 through in or
9 around March 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Elk Grove,
10 California location(s). PLAINTIFF regularly worked at least approximately five (5) to twelve (12)
11 hours per day, at least five (5) days per week. At all relevant times, PLAINTIFF was a non-exempt
12 employee that was paid on an hourly basis for time counted by DEFENDANTS as hours worked.

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

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

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

1 the clock work policies and/or practices.

2 30. For example, as explained above, based on information and belief, DEFENDANTS
3 would unlawfully edit the clock in and out times for PLAINTIFF's and other Aggrieved Employees'
4 meal periods in order to display at least a thirty minute off-duty meal period during most if not all
5 shifts worked, notwithstanding the fact that DEFENDANTS had actual and/or constructive
6 knowledge that DEFENDANTS had required PLAINTIFF and other Aggrieved Employees' to
7 perform work-related tasks during their meal periods.

8 31. Based on information and belief, DEFENDANTS required Aggrieved Employees to
9 be at their assigned workstations at the start of a scheduled shift, thereby forcing Aggrieved
10 Employees to gather work-related equipment and/or safety gear, make any necessary adjustments
11 to tools/equipment and/or perform maintenance/cleaning tasks, don work clothing/uniforms and/or
12 protective equipment, and/or complete other work tasks prior to their scheduled shift and/or prior to
13 clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

14 32. For example, at times, PLAINTIFF was required to perform work tasks prior to
15 clocking in for the start of her shift, including but not limited to, setting up the bar and/or completing
16 other pre-shift work tasks off the clock, resulting in at least approximately fifteen (15) to twenty
17 (20) minutes of off-the-clock work on each of the numerous occasions this occurred,
18 DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of
19 wages owed to PLAINTIFF.

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

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

1 and overtime wages owed to Aggrieved Employees.

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

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

12 37. PLAINTIFF and other Aggrieved Employees were required to perform other off-the-
13 clock work for which they were not compensated.

14 38. For example, based on information and belief, at times, DEFENDANTS'
15 biometric/electronic/POS employee time-keeping system malfunctioned such that Aggrieved
16 Employees were required to either reinitiate and/or otherwise troubleshoot the system prior to being
17 able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in
18 from meal periods, resulting in off-the-clock work and the underpayment of wages owed to
19 Aggrieved Employees.

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

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

1 for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the
2 doors. This resulted in additional off-the-clock post-shift work that was not compensated and the
3 underpayment of wages owed to Aggrieved Employees.

4 41. Based on information and belief, DEFENDANTS required Aggrieved Employees to
5 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
6 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

7 42. Based on information and belief, at times, DEFENDANTS require/required
8 Aggrieved Employees to travel around and/or between DEFENDANTS' restaurants, hotels, resorts,
9 offices, facilities and/or locations without compensating Aggrieved Employees for the travel time.

10 43. For example, based on information and belief, due to scheduling issues and/or
11 understaffing, Aggrieved Employees were at times required after working at their scheduled facility
12 location to cover a shift at another of DEFENDANTS' restaurants/hotels/resorts/facilities/locations
13 but were not compensated for the time spent driving to the second restaurant/facility, resulting in
14 the underpayment of minimum and overtime wages owed to Aggrieved Employees.

15 44. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
16 Employees for all time spent completing DEFENDANTS' required trainings and/or courses (e.g.,
17 food safety and/or food handler courses) and/or testings and/or certifications (e.g., food handler
18 certifications).

19 45. Based on information and belief, DEFENDANTS failed to pay Aggrieved
20 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
21 Employee worked in California.

22 46. Moreover, based on information and belief, DEFENDANTS failed to pay
23 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split
24 shifts during the relevant period.

25 47. For example, based on information and belief, at times, DEFENDANTS required
26 PLAINTIFF and/or other Aggrieved Employees to work two separate shifts in the same day. Based
27 on information and belief, DEFENDANTS failed to pay PLAINTIFF and/or other Aggrieved
28 Employees split shift compensation whenever PLAINTIFF's and/or other Aggrieved Employees'

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

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

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

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

1 forty (40) hours in a week.

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

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

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

14 54. Based on information and belief, DEFENDANTS calculated the owed overtime
15 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
16 based on the minimum wage established for the cities and/or counties within which Aggrieved
17 Employees worked, resulting in the miscalculation and underpayment of overtime wages owed to
18 Aggrieved Employees who worked in cities and/or counties in California with minimum wage rates
19 above the California minimum wage rate.

20 55. Based on information and belief, DEFENDANTS failed to incorporate all non-
21 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive
22 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
23 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
24 wages owed to Aggrieved Employees.

25 56. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
26 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
27 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
28 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees

1 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
2 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
3 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
4 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
5 completely.

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

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

11 59. For example, PLAINTIFF was at times required to clock out for meal periods but to
12 continue working due to the need to complete assigned job duties, resulting in denied meal periods
13 as well as DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the
14 underpayment of wages owed to PLAINTIFF.

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

20 61. Based on information and belief, DEFENDANTS implemented policies and/or
21 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
22 during unpaid meal periods.

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

27 63. Based on information and belief, despite DEFENDANTS' failure to provide lawful
28 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end

1 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
2 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
3 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
4 Employees did not receive lawful meal periods.

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

7 65. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
8 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
9 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
10 did DEFENDANTS have any sort of compliant policy in practice.

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

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

21 68. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
22 additional hour of wages at their respective regular rates of compensation for each workday a lawful
23 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
24 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
25 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
26 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
27 compensation for purposes of calculating the owed meal period premium.

28 69. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
15
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
2 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
3 middle of the work period, as required by law.

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

8 71. Based on information and belief, DEFENDANTS did not have a have a compliant
9 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
10 practice.

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

15 73. For example, PLAINTIFF was frequently required to take shortened/interrupted rest
16 periods and/or work through her owed rest periods completely due to the need to complete assigned
17 job duties.

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

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

24 76. Based on information and belief, DEFENDANTS implemented policies and/or
25 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
26 DEFENDANTS' control during rest periods.

27 77. Based on information and belief, Aggrieved Employees were pressured to complete
28 their work duties according to a designated schedule such that rest periods were only taken once

1 tasks were completed, and/or as time permitted.

2 78. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
3 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
4 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
5 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
6 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
7 shift differential pay, and/or other non-discretionary compensation into the regular rate of
8 compensation for purposes of calculating the owed rest period premium.

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

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

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

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

27 83. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
28 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied

1 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
2 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
3 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
4 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
5 applicable hourly rates in effect during the pay period and the corresponding number of hours
6 worked at each hourly rate by the employee.

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

15 85. As described herein, based on information and belief, DEFENDANTS also failed to
16 incorporate all forms of non-discretionary compensation earned during the pay period into the
17 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
18 of overtime worked by PLAINTIFF and other Aggrieved Employees.

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

21 87. For example, based on information and belief, wage statements issued by
22 DEFENDANTS failed to list the inclusive dates of the pay period for which the Aggrieved
23 Employee is being paid.

24 88. For example, based on information and belief, at times, DEFENDANTS issued wage
25 statements to Aggrieved Employees containing payment for hours worked during previous pay
26 periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate
27 pay period for that retroactive pay, further failing to list the total hours worked for the pay period,
28 including but not limited to, the total hours worked for the pay period the retroactive pay corresponds

1 with, in violation of including but not limited to, Labor Code section 226(a)(2) and/or Labor Code
2 section 226(a)(6).

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

6 90. For example, DEFENDANTS' wage statements issued to PLAINTIFF identify the
7 following entity as the legal name of PLAINTIFF's employer: "Chicago Fire". However, based on
8 information and belief, an entity by the name Chicago Fire does not exist on the California Secretary
9 of State website and/or is a fictitious business name. As such, DEFENDANTS issued wage
10 statements to Aggrieved Employees that fail to list the correct name and/or address of the legal
11 entity that is the employer, in violation of Labor Code section 226(a)(8).

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

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

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

23 94. For example, PLAINTIFF, through counsel, sent a written request for time, pay and
24 personnel records to DEFENDANTS on or around including but not limited to the following dates:
25 January 24, 2024. Yet, DEFENDANTS failed to timely produce complete records within the time
26 periods delineated by California labor law.

27 95. For example, DEFENDANTS failed to produce PLAINTIFF's wage statements
28 and/or time records. Based on information and belief, DEFENDANTS failed and continue to fail to

1 timely produce complete time, pay, and personnel records when requested by other Aggrieved
2 Employees.

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

8 97. Upon separation of employment, Aggrieved Employees' final paychecks were not
9 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
10 Moreover, PLAINTIFF's and Aggrieved Employees' final paychecks, once provided, did not
11 include all wages owed as they were devoid of, including but not limited to, all owed minimum
12 wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off
13 wages at the properly accrued rates.

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

22 99. These violations subject DEFENDANTS to civil penalties under Labor Code section
23 203, 210, and/or 256.

24 100. **Unlawful Deductions:** Labor Code section 221 prohibits an employer from
25 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
26 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
27 from Aggrieved Employees paychecks during the relevant period including without limitation,
28 deducting costs of uniforms and/or costs of pay cards and/or other business costs and/or deducting

1 wages for purported overpayments from previous pay periods and/or unlawfully deducting wages
2 for negligently damaged property. Such a practice is in violation of including but not limited to,
3 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
4 Section 2699.

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

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

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

25 104. Based on information and belief, DEFENDANTS shifted the costs of doing business
26 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
27 to, uniforms/work clothing/work shoes, personal protective/safety gear and/or the use of Aggrieved
28 Employees' personal mobile phone and data usage for work-related purposes including but not

1 limited to receiving and responding to work-related messages and/or phone calls.

2 105. For example, on information and belief, Aggrieved Employees received
3 calls/messages to their personal cell phones/mobile devices from supervisors and/or other
4 employees regarding scheduling and/or other work tasks but were not provided any and/or full
5 reimbursement from DEFENDANTS for these business expenses incurred as a result of being
6 required to use their personal cell phone(s)/mobile device(s) to carry out their assigned job duties.

7 106. For example, PLAINTIFF was frequently required to respond to work-related calls
8 and/or messages, including but not limited to, prior to clocking in for the start of her shifts and/or
9 after clocking out for the end of her shifts, during unpaid meal periods and/or otherwise outside of
10 her scheduled shift times, however, DEFENDANTS did not reimburse PLAINTIFF at all and/or in
11 full for the business expenses PLAINTIFF incurred in connection with being required to use her
12 personal cell phone / mobile device to perform her assigned job duties, including without limitation,
13 increased data plan charges.

14 107. Based on information and belief, Aggrieved Employees were not reimbursed for the
15 cost of using their personal phone(s) for work-related purposes and/or the cost of purchasing and/or
16 maintaining hand tools, work equipment, work uniforms/work clothing/work shoes, and/or personal
17 protective/safety gear.

18 108. For example, based on information and belief, Aggrieved Employees were not
19 reimbursed for the costs of purchasing and/or maintaining work uniforms/work clothing/work shoes,
20 personal protective/safety gear, such as, but not limited to, face masks, gloves, hairnets and/or work
21 shoes.

22 109. For example, PLAINTIFF was required to purchase and/or maintain uniforms, work
23 clothing, work shoes, personal protective /safety gear, including without limitation, apron(s) and/or
24 non-slip shoes and/or other uniforms, work clothing, work shoes, personal protective /safety gear
25 DEFENDANTS required PLAINTIFF wear for work, however, DEFENDANTS failed to provide
26 any and/or full reimbursement for these business expenses.

27 110. Based on information and belief, DEFENDANTS required Aggrieved Employees to
28 work remotely, including but not limited to, from their homes. As a result of working from home,

1 Aggrieved Employees were required to use their home internet, electricity, and other utilities in the
2 discharge of their job duties.

3 111. Based on information and belief, DEFENDANTS lacked and continue to lack a
4 policy to reimburse employees who regularly increased utility expenses as a result of working from
5 home. Aggrieved Employees' increased utility and internet expenses were expenses for which
6 DEFENDANTS were required to reimburse Aggrieved Employees a reasonable percentage based
7 on their required business use because said expenses were necessarily incurred by Aggrieved
8 Employees as a direct consequence of the discharge of their duties of employment.

9 112. Based on information and belief, DEFENDANTS failed to reimburse Aggrieved
10 Employees for expenses Aggrieved Employees incurred as a result of being required to work
11 remotely and/or from their homes, including but not limited to, increased utility, increased data plan
12 charges and/or internet expenses.

13 113. For example, DEFENDANTS required PLAINTIFF to perform work remotely,
14 including but not limited to, participating in off-the-clock work-related Zoom meetings, however,
15 DEFENDANTS failed to provide PLAINTIFF with any and/or full reimbursement for the business
16 expenses PLAINTIFF incurred in connection with being required to perform work-related tasks
17 remotely, including but not limited to, increased utility expenses.

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

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

27 116. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
28 provides as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 132. **Violation of Labor Code section 351 and 353.** Labor Code Section 351 prohibits
26
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
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1 employers and their agents from sharing in or keeping any portion of a gratuity left for or given to
2 one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions
3 from gratuities, or from using gratuities as direct or indirect credits against an employee's
4 wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities
5 received.

6 133. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
7 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
8 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
9 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
10 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
11 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
12 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
13 Labor Code section 351.

14 134. Based on information and belief, DEFENDANTS charges an additional service
15 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
16 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
17 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
18 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
19 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
20 constitute a gratuity that is intended to the employees providing the service).

21 135. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period
22 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
23 they experienced within the statutory period, and \$200 per pay period for each additional violation.

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

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

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

8 **138.** Upon separation of employment, Aggrieved Employees' final paychecks were not
9 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
10 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
11 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
12 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
13 accrued rates.

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

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

26 **141.** Based on information and belief, DEFENDANTS have a policy and practice of
27 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
28 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the

1 office or agency of DEFENDANTS in the county where the work was performed, in violation of
2 Labor Code Section 208.

3 142. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

4 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

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

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

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

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

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

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

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

21 Unlawful Inquires into Criminal History

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

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

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

3 Unlawful PAGA Waiver

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

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

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

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

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

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

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

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

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

12 **Failure to Keep Accurate Records**

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

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

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

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

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

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

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

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

26 166. Based on information and belief, DEFENDANTS fail to timely produce or make
27 _____
28 to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant
2 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
3 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

4 **Meal Period Violations**

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

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

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

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

28 171. As explained above, PLAINTIFF and other Aggrieved Employees were consistently

1 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
2 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
3 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
4 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
5 periods completely.

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

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

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

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

21 176. These unlawful meal period policies and practices result in violations of Labor Code
22 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
23 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
24 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
25 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

26 **Rest Period Violations**

27 177. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
28 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours

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

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

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

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

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

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

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

17 **Failure to Provide Suitable Resting Facilities**

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

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

1 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
2 vehicles.

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

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

8 **Minimum and Overtime Wage Violations**

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

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

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

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

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

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

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

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

24 **Statutory Wage Violations**

25 196. 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**

9 197. 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**

18 198. 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**

2 199. 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.”

8 200. 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.

16 201. 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.

20 202. 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.

22 203. 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.

26 204. 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.

1 205. 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.

5 206. 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.

8 207. 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**

13 208. 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.

22 209. 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).

2 210. 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.

12 211. 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).

19 212. 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).

23 213. 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.

27 214. 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.

1 215. 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.

4 216. 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.

7 217. 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.

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

12 219. 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.

21 220. 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**

25 221. 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 ~~4~~ "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.

4 222. 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**

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

12 224. (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.

20 225. 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.

25 226. 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**

3 227. 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.

7 228. 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**

14 229. 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.

17 230. 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.

24 231. 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).

28 232. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and

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

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

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

16 **Violation of Labor Code section 351 and 353**

17 235. Labor Code Section 351 prohibits employers and their agents from sharing in or
18 keeping any portion of a gratuity left for or given to one or more employees by a patron.
19 Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using
20 gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353
21 mandates employers to keep accurate records of all gratuities received.

22 236. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
23 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
24 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
25 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
26 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
27 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
28 Aggrieved Employees by the next regular payday following the credit card payment, in violation of

1 Labor Code section 351.

2 237. Based on information and belief, DEFENDANTS charges an additional service
3 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
4 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
5 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
6 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
7 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
8 constitute a gratuity that is intended to the employees providing the service).

9 238. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period
10 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
11 they experienced within the statutory period, and \$200 per pay period for each additional violation.

12 **Sick Leave Violations**

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

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

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

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

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

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

11 245. On information and belief, PLAINTIFF alleges that all of these practices were
12 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

1 **Untimely Payment of Final Wages**

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

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

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

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

24 **Violation of Labor Code Section 208**

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

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

6 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

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

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

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

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

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

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

18 Unlawful Inquires into Criminal History

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

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

28 264. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor

1 Code section 432.7. By asking about convictions at the application phase or prior to extending an
2 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
3 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
4 disclose arrests and/or convictions as a condition of employment.

5 Unlawful PAGA Waiver

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

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

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

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

25 Violation of Labor Code Section 432.6

26 269. Based on information and belief, DEFENDANTS required Aggrieved Employees to
27 sign meal period waivers that were universally signed as a condition of employment, including but
28 not limited to, during the onboarding process. Further, these invalid waivers are otherwise unlawful

1 under Labor Code section 432.6.

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

5 271. Labor Code Section 432.6(b) provides in pertinent part:

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

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

15 274. Under the provisions of PAGA and the above mentioned Labor Code sections,
16 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
17 226.7, 227.3, 245-248.6, 256, 351, 353, 432, 432.5, 432.6, 432.7, 510, 512, 551, 552, 558, 558.1,
18 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all
19 applicable Wage Orders as well as all interpretations of these laws by California Courts and
20 administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS
21 are liable for the following penalties:

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

1 whether those violations were committed as against PLAINTIFF or any
2 Aggrieved Employee, whether a party to this action or not.

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

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1 **PRAYER FOR RELIEF**

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

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

11
12 Dated: March 25, 2024

CROSNER LEGAL, PC

13
14 By: _____


15 Jamie K. Serb, Esq.
16 Brandon Brouillette, Esq.
17 Zachary M. Crosner, Esq.
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