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County of Alameda

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

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

11 **COUNTY OF ALAMEDA**

12 SARAH SANCHEZ, on behalf of the State of
California and all Aggrieved Employees,

13 Plaintiff,

14 v.
15

16 AUTONATION, INC., a Delaware
17 Corporation; AUTO MISSION, LTD., a
California Corporation; and DOES 1-100,
18 inclusive,

19 Defendants.

Case No.: **24CV068631**

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

1 Plaintiff, SARAH SANCHEZ, (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants
3 AUTONATION, INC., a Delaware Corporation; AUTO MISSION, LTD., a California Corporation;
4 and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is
5 informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

24 **THE PARTIES**

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

27 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
28 DEFENDANTS as a non-exempt employee with a job title of service advisor and/or a similar title(s)

1 and/or job position(s) from in or around January 2023 through in or around late February 2023.
2 PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Hayward, California location(s),
3 which operated/operates under the name(s) AutoNation Toyota Scion Hayward and/or AutoNation
4 Toyota Hayward.

5 6. Defendant AUTONATION, INC. is a Delaware Corporation that, at all relevant
6 times, was authorized to do business within the State of California and is doing business in the State
7 of California.

8 7. Defendant AUTO MISSION, LTD. is a California Corporation that, at all relevant
9 times, was authorized to do business within the State of California and is doing business in the State
10 of California.

11 8. DEFENDANTS own, operate, manage and/or staff its employees to work at the
12 dealerships and/or facilities and/or other location(s) in California, including but not limited to at
13 least forty-three dealerships and/or facilities in California, including but not limited to, the
14 dealership(s) and/or facilities in Hayward, California, where DEFENDANTS assigned PLAINTIFF
15 to work. DEFENDANTS, through its various locations, serve the automotive industry.

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

22 10. PLAINTIFF is further informed and believes that, at all relevant times, each
23 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
24 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
25 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
26 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
27 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
28 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant

1 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
2 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
3 controlled, aided and abetted the conduct of all other Defendants.

4 **JOINT LIABILITY**

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

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

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

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

20 15. For example, based on information and belief, wage statements issued by
21 DEFENDANTS to Aggrieved Employees identify "Auto Mission Ltd" and "AutoNation" as the
22 name of the legal entity that is the employer.

23 16. Based on information and belief, various documents contained in Aggrieved
24 Employees' personnel files, including but not limited to, employment policy documents,
25 employment agreements and/or other employment-related documents, identify "Autonation" and/or
26 "Autonation, Inc." as the name of Aggrieved Employees' employer. Based on information and
27 belief, Autonation, Inc. owns, operates and/or manages multiple dealerships, facilities and/or
28 locations including but not limited to, dealerships, facilities and/or locations operating under the

1 name AutoNation Toyota Scion Hayward and/or AutoNation Toyota Hayward. Moreover, based on
2 information and belief, DEFENDANTS, and each of them maintain the same principal business
3 address and/or mailing address and/or agent for service of process as provided to the California
4 Secretary of State and/or Secretary of State of the State of Incorporation and/or share some of the
5 same attorneys and/or human resources personnel to oversee employment-related matters.

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

20 18. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
21 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
22 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
23 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
24 PLAINTIFF seeks relief in this Complaint.

25 19. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
26 control over, applied the same policies and practices, and engaged in the same acts and omissions
27 with regard to the other Aggrieved Employees.

28 20. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS must
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PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under
2 PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform
3 services from which they benefited, and furthermore that the aforementioned entities had the right
4 to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant
5 times herein, so as to be considered the joint employers of PLAINTIFF.

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

9 **PAGA ALLEGATIONS**

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

13 All current and former non-exempt employees that worked either
14 directly or via a staffing agency for any one or more of the
15 DEFENDANTS at DEFENDANTS’ Hayward, California location(s),
16 operating under the name(s) AutoNation Toyota Scion Hayward
17 and/or AutoNation Toyota Hayward, at any time from one year plus
18 65 days from the filing of the initial Complaint through the present
19 (“PAGA Period”).

20 23. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
21 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
22 limitations period and suffered one or more of the Labor Code violations set forth herein.
23 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
24 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
25 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
26 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by
27 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
28 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations

1 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
2 *Id.* at 760-761.

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

4 24. PLAINTIFF, on January 12, 2024, through counsel, gave written notice by online
5 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
6 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
7 in this Complaint (“PAGA Notice”).

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

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

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

19 **FACTUAL ALLEGATIONS**

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

24 29. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
25 DEFENDANTS as a non-exempt employee with a job title of service advisor and/or a similar title(s)
26 and/or job position(s) from in or around January 2023 through in or around late February 2023.

27 30. PLAINTIFF worked for DEFENDANTS at DEFENDANTS’ Hayward, California
28 location(s), which operated/operates under the name(s) AutoNation Toyota Scion Hayward and/or

1 AutoNation Toyota Hayward.

2 31. PLAINTIFF regularly worked at least six (6) to nine (9) hours per day.
3 DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours
4 worked.

5 32. PLAINTIFF was also compensated with commissions (e.g., commission per
6 returning customer contacted) and/or spiffs and/or non-discretionary bonuses/incentive pay and/or
7 other non-discretionary compensation. Based on information and belief, Aggrieved Employees
8 were also compensated with bonuses/incentive pay, spiffs and/or commissions, including but not
9 limited to, bonuses and/or commissions for repairs completed and/or parts sold and/or piece rate pay
10 and/or were compensated with other non-discretionary remuneration.

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

13 34. **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 35. 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 (often at least sixty minutes per shift) for meal periods, despite having actual and/or
23 constructive knowledge that PLAINTIFF and other Aggrieved Employees were subject to
24 DEFENDANTS' control during purported meal periods and/or were otherwise not afforded lawful
25 meal periods, depriving PLAINTIFF and Aggrieved Employees of all wages owed.

26 36. 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 37. For example, based on information and belief, DEFENDANTS suffered, permitted,
3 explicitly instructed and/or otherwise required Aggrieved Employees to perform pre-shift and/or
4 post-shift off-the-clock work, such as but not limited to, contacting prospective
5 customers/customers, completing paperwork and/or data entry, cleaning and/or setting up
6 DEFENDANTS' facilities and/or show room(s), making and/or responding to work-related
7 communications and/or completing other off-the-clock work tasks that were neither recorded nor
8 compensated, resulting in DEFENDANTS' failure to pay Aggrieved Employees for all hours
9 worked and the underpayment of minimum wages and overtime wages owed to Aggrieved
10 Employees.

11 38. Based on information and belief, prior to beginning a scheduled shift, Aggrieved
12 Employees were required to start and/or boot all of DEFENDANTS' computer systems, phone
13 systems / applications and/or software so as to have all systems running at the start of the scheduled
14 shift. As such, based on information and belief, Aggrieved Employees at times spent at least 10-15
15 minutes before each scheduled shift preparing and/or troubleshooting different work applications in
16 order to clock in and begin their shifts. This pre-shift work was off-the-clock and uncompensated
17 resulting in unpaid minimum and overtime wages.

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

27 40. Based on information and belief, DEFENDANTS did not compensate Aggrieved
28 Employees for all time spent donning and doffing personal protective equipment, safety equipment

1 and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses and/or face masks) during meal
2 periods, before the start of a scheduled shift, and after completing a scheduled shift, resulting in
3 DEFENDANTS' failure to pay Aggrieved Employees for all work time and the underpayment of
4 minimum wages and overtime wages owed to Aggrieved Employees.

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

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

11 43. Based on information and belief, at times, Aggrieved Employees were required to
12 complete other work tasks outside of their reported work time, before clocking in for the start of
13 their shift and/or after clocking out for the end of their shift and/or otherwise outside of their
14 scheduled shift times resulting in DEFENDANTS' failure to compensate Aggrieved Employees for
15 all hours worked and the underpayment of minimum wages and overtime wages to Aggrieved
16 Employees.

17 44. For example, based on information and belief, Aggrieved Employees were required
18 to complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-
19 related phone calls and/or messages they received to their phones and were required to respond to,
20 including but not limited to, communications from supervisors and/or other Aggrieved Employees
21 regarding scheduling and/or other work tasks, resulting in the underpayment of minimum and
22 overtime wages owed to Aggrieved Employees.

23 45. Based on information and belief, at times, DEFENDANTS instituted a piece-rate-
24 based compensation scheme that resulted in pay periods during which Aggrieved Employees were
25 denied the minimum wage for all hours worked.

26 46. For example, on information and belief, at times, DEFENDANTS paid Aggrieved
27 Employees on a strictly commission and/or piece-rate basis (e.g., per repair/service job and/or sale
28 completed and/or using a flagged hour basis), at least during some pay periods, during the relevant

1 time period. However, based on information and belief, DEFENDANTS failed to separately
2 compensate Aggrieved Employees for all non-piece rate related activities/all non-productive time,
3 including but not limited to, all rest breaks and/or time spent preparing/setting up for jobs, time
4 spent completing paperwork, waiting between jobs and tasks and/or other waiting time, and/or
5 performing work duties that otherwise fall outside of the piece-rate pay criteria. DEFENDANTS'
6 failure to separately compensate Aggrieved Employees for their rest periods and/or other non-
7 productive time and/or failure to compensate them at the correct rates for all non-productive time
8 including rest periods resulted in the failure to pay Aggrieved Employees for all hours worked and
9 violations of California wage and hour laws, including but not limited to, Labor Code sections 226.2
10 and/or 1197. Based on information and belief, DEFENDANTS further failed to include this
11 information on these employees'

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

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

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

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

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

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

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

11 53. Based on further information and belief, DEFENDANTS failed to pay the applicable
12 minimum wage rate(s) in effect for the city and/or county in which the Aggrieved Employee worked,
13 which resulted in a failure to pay all owed overtime wages as the overtime rate was based on an
14 unlawful minimum wage rate.

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

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

26 56. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
27 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
28 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty

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

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

12 58. For example, PLAINTIFF was frequently required to take late meal periods (i.e. after
13 working more than five (5) hours). Also, DEFENDANTS often instructed PLAINTIFF to clock out
14 for meal periods but to continue completing work tasks, resulting in denied meal periods as well as
15 DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of
16 wages owed to PLAINTIFF.

17 59. Based on information and belief, Aggrieved Employees were restricted to
18 DEFENDANTS' premises and/or were required to monitor work communication devices and
19 respond to work-related communications during purportedly off-duty meal periods and as such was
20 not relieved of all duties and DEFENDANTS' control during purportedly off-duty meal periods, in
21 violation of California meal period law.

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

27 61. Based on information and belief, DEFENDANTS implemented policies and/or
28 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control

1 during unpaid meal periods.

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

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

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

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

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

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

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

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

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

15 **71.** Based on information and belief, DEFENDANTS did not have a have a compliant
16 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
17 practice.

18 **72.** For example, based on information and belief, Aggrieved Employees were at times
19 if not always unable to take compliant rest periods due to their need to complete assigned job duties
20 and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported
21 rest periods restricted to DEFENDANTS' premises.

22 **73.** For example, PLAINTIFF was frequently if not always required to work through
23 heris owed rest periods due to the need to complete his assigned job duties.

24 **74.** Also, based on information and belief, PLAINTIFF and other Aggrieved Employees
25 were restricted to the worksite premises and/or required to monitor work communication devices
26 during any rest periods, and as such, were not relieved of all duties and DEFENDANTS' control
27 during any rest periods, in violation of California rest period law.

28 **75.** Based on information and belief, any purported rest periods were interrupted, cut

1 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of
2 their job duties, and/or commentary from supervisors pressuring them to skip rest periods
3 completely and/or take non-compliant rest periods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 88. For example, DEFENDANTS' wage statement issued to PLAINTIFF for pay date
5 April 25, 2023 shows overtime earnings of \$5.31, however, DEFENDANTS' wage statement does
6 not list the total overtime hours worked nor any overtime rate of pay. As such, DEFENDANTS'
7 wage statement fails to list the total hours worked and all applicable hourly rates in effect during the
8 pay period and the corresponding number of hours worked at each hourly rate, in violation of
9 including but not limited to Labor Code section 226(a)(2) and/or Labor Code section 226(a)(9).

10 89. Based on information and belief, DEFENDANTS issued wage statements to
11 Aggrieved Employees that failed to accurately list all deductions, in violation of Labor Code Section
12 226(a)(4).

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

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

19 92. For example, based on information and belief, wage statements issued by
20 DEFENDANTS failed to list the inclusive dates of the pay period for which the Aggrieved
21 Employee is being paid. For example, based on information and belief, at times, DEFENDANTS
22 issued wage statements to Aggrieved Employees containing payment for hours worked during
23 previous pay periods, yet DEFENDANTS' wage statements do not include the inclusive dates of
24 the accurate pay period for that retroactive pay, further failing to list the total hours worked for the
25 pay period, including but not limited to, the total hours worked for the pay period the retroactive
26 pay corresponds with, in violation of including but not limited to, Labor Code sections 226(a)(2)
27 and/or 226(a)(6).

28 93. As such, DEFENDANTS' issued wage statements to Aggrieved Employees that did

1 not include all of the statutorily required information, including but not limited to, the correct name
2 and/or address of the legal entity that is the employer.

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

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

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

17 97. **Failure to Produce Employment Records.** Based on information and belief,
18 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
19 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code
20 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
21 counsel, sent a written request for payroll and personnel records to DEFENDANTS. Yet,
22 DEFENDANTS failed to timely produce complete records within the time periods delineated by
23 California labor law. For example, DEFENDANTS did not produce PLAINTIFF’s time records.
24 Based on information and belief, DEFENDANTS failed and continues to fail to timely produce
25 complete payroll and personnel records when requested by other Aggrieved Employees. Based on
26 information and belief, DEFENDANTS failed and continue to fail to timely produce complete time,
27 pay, and personnel records when requested by other Aggrieved Employees.

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

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

14 100. **Failure to Provide Written Commission Agreements.** Labor Code section 2751
15 requires that all commission contracts "be in writing and . . . set forth the method by which the
16 commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute,
17 employers must also "give a signed copy of the contract to every employee who is a party [to the
18 contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section 2751(b).

19 101. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
20 Aggrieved Employees who were compensated on a commission basis with proper written
21 commission agreements, in violation of Labor Code section 2751.

22 102. **Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an
23 employer to pay employees compensated on a piece-rate basis separately for rest and recovery
24 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an
25 employer to include on the wage statements for these employees the total hours of compensable rest
26 and recovery period, the total hours for other non-productive time, the rates of compensation for
27 these hours, and the gross wages paid for these hours. In addition, the statute requires that employees
28 shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the

1 higher of: (i) an average hourly rate determined by dividing the total compensation for the
2 workweek, exclusive of compensation for rest and recovery periods and any premium compensation
3 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,
4 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to
5 employees compensated on a commission basis.

6 103. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
7 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
8 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
9 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
10 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
11 226.2.

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

18 105. Based on information and belief, DEFENDANTS shifted the costs of doing business
19 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
20 to, uniforms, work clothing/shoes, protective equipment/safety gear (e.g., gloves and/or face masks)
21 and/or the use of Aggrieved Employees' personal mobile phone and data usage for work-related
22 purposes, including but not limited to, receiving and responding to work related messages and/or
23 phone calls.

24 106. For example, PLAINTIFF was required to use her personal cell phone / mobile
25 device for work-related purposes, including but not limited to, receiving and responding to work-
26 related messages and/or phone calls, including but not limited to, calls and/or messages from
27 supervisors regarding work-related matters, however, DEFENDANTS did not reimburse
28 PLAINTIFF at all and/or in full for the business expenses PLAINTIFF incurred in connection with

1 being required to use her personal cell phone / mobile device for work, including but not limited to,
2 increased data plan charges.

3 107. For example, PLAINTIFF was required to download and regularly use work-related
4 application(s), including but not limited to, employee timekeeping applications, without receiving
5 any and/or full reimbursement from DEFENDANTS for the business expenses incurred in
6 connection with being required to use his personal cell phone/mobile device for work.

7 108. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees
8 also received work-related calls/messages to their personal phones from managers and/or
9 supervisors and/or other Aggrieved Employees regarding scheduling and other work tasks without
10 receiving any and/or full reimbursement from DEFENDANTS for these business expenses.

11 109. Moreover, based on information and belief, Aggrieved Employees also were required
12 to use and did use personal devices to perform work duties at home/remotely, such as, but not limited
13 to, reviewing and/or completing work-related paperwork and/or other documents as mandated by
14 DEFENDANTS, however DEFENDANTS failed to provide reimbursement / full reimbursement
15 for expenses Aggrieved Employees incurred as a result of working for DEFENDANTS remotely
16 and/or from their homes, including but not limited to, cost of internet service, home electricity, cost
17 of additional memory and/or virus software for home computer / home computer use, among other
18 business expenses associated with remote work required by DEFENDANTS.

19 110. Based on information and belief, Aggrieved Employees were not reimbursed for the
20 business use of their personal vehicles, including but not limited to, mileage, wear and tear, and/or
21 cost of fuel when they were required to drive between job sites/facilities and/or otherwise use their
22 personal vehicles for DEFENDANTS' business purposes.

23 111. For example, based on information and belief, at times, Aggrieved Employees were
24 required to use their personal vehicles to drive between DEFENDANTS' various facilities, offices
25 and/or locations and/or otherwise use their personal vehicles to carry out their assigned job duties
26 but were not provided any and/or full reimbursement for DEFENDANTS' business use of their
27 personal vehicles. As such, DEFENDANTS failed to compensate Aggrieved Employees at the
28 Internal Revenue Service (IRS) mandated per mile compensation rate for the relevant period.

1 112. Based on further information and belief, at times, Aggrieved Employees were at
2 times required to supply (purchase and/or maintain) their own hand tools and/or equipment they
3 required to perform their assigned job duties, however, they did not receive any and/or full
4 reimbursement from DEFENDANTS for the expenses incurred in connection therewith.

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

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

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

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

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

27 118. Based on information and belief, DEFENDANTS have and continue to have a
28 uniform policy and practice of requiring Aggrieved Employees to work at least seven days

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

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

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

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

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

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

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

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

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

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

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

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

27 128. Moreover, based on information and belief, the nature of the work reasonably
28 permitted the use of seats for at least part of the time that Aggrieved Employees were working.

1 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
2 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
3 of seats would not interfere with the performance of their duties.

4 129. **Violation of Labor Code section 351 and 353.** Labor Code Section 351 prohibits
5 employers and their agents from sharing in or keeping any portion of a gratuity left for or given to
6 one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions
7 from gratuities, or from using gratuities as direct or indirect credits against an employee's
8 wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities
9 received.

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

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

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

28 133. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,

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

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

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

18 **136.** For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck
19 for at least approximately two (2) months following the separation of PLAINTIFF's employment,
20 and PLAINTIFF's late final paycheck was devoid of all wages owed, including without limitation,
21 all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave
22 and/or paid time off wages at the properly accrued rates (including but not limited to, all owed
23 vacation pay/paid time off paid at the final rate including non-discretionary compensation, including
24 but not limited to, shift differentials).

25 **137.** For example, PLAINTIFF's employment with DEFENDANTS separated in or
26 around late February 2023, however, PLAINTIFF's final paycheck is dated April 25, 2023 and
27 PLAINTIFF's late final paycheck is devoid of all wages owed, including without limitation, all
28 owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or

1 paid time off wages at the properly accrued rates (including but not limited to, all owed vacation
2 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
3 limited to, shift differentials).

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

12 139. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

13 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

21 141. Labor Code section 432.6(a), provides that "a person shall not, as a condition of
22 employment, continued employment, or the receipt of any employment-related benefit, require any
23 applicant for employment or any employee to waive any right..."

24 142. Based on information and belief, DEFENDANTS required Aggrieved Employees to
25 sign meal period waivers that were universally signed as a condition of employment, including but
26 not limited to, during the onboarding process. By requiring Aggrieved Employees to sign unlawful
27 meal period waivers as a condition of obtaining and/or maintaining employment, DEFENDANTS
28 violated Labor Code section 432.5. Further, these invalid waivers are otherwise unlawful under

1 Labor Code section 432.6. Based on information and belief, DEFENDANTS ordered unlawful
2 financial credit checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and
3 required Aggrieved Employees to provide ongoing written consent to the unlawful credit checks as
4 a condition of employment, in violation of California and Federal law, which results in a further
5 violation of Labor Code section 432.5.

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

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

25 145. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
26 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
27 section 432.5.

28 146. Based on further information and belief, DEFENDANTS also required Aggrieved

1 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
2 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
3 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
4 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

5 147. Based on further information and belief, DEFENDANTS knew that requiring
6 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
7 condition of obtaining and/or holding employment was unlawful.

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

10 Unlawful Inquires into Criminal History

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

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

20 Unlawful PAGA Waiver

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

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

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

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

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

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

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

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

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

Failure to Keep Accurate Records

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

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

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

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

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

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

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

25 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

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

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

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

20 **Meal Period Violations**

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

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

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

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

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

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

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

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

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

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

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

14 **Rest Period Violations**

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

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

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

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

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

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

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

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

5 **Failure to Provide Suitable Resting Facilities.**

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

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

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

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

24 **Minimum and Overtime Wage Violations**

25 186. California law provides that employees in California must be paid for all hours
26 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
27 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
28 The minimum wage standard applies to each hour employees worked for which they were not paid.

1 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
2 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
3 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

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

17 189. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
18 Aggrieved Employees for all hours worked.

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

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

1 192. Based on information and belief, DEFENDANTS further violated California's
2 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
3 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
4 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
5 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
6 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
7 other Aggrieved Employees.

8 193. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
9 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
10 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
11 Wage Orders, section 20.

12 **Failure to Provide Written Commission Agreements**

13 194. Labor Code section 2751 requires that all commission contracts "be in writing and .
14 . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code
15 section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract
16 to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract
17 from each employee." *Id.* section 2751(b).

18 195. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
19 Aggrieved Employees who were compensated on a commission basis with proper written
20 commission agreements, in violation of Labor Code section 2751.

21 **Violation of Labor Code Section 226.2**

22 196. Labor Code section 226.2 requires an employer to pay employees compensated on a
23 piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any
24 piece-rate pay. This statute further requires an employer to include on the wage statements for these
25 employees the total hours of compensable rest and recovery period, the total hours for other non-
26 productive time, the rates of compensation for these hours, and the gross wages paid for these hours.
27 In addition, the statute requires that employees shall be compensated for rest and recovery periods at
28 a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by

1 dividing the total compensation for the workweek, exclusive of compensation for rest and recovery
2 periods and any premium compensation for overtime, by the total hours worked during the
3 workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case
4 law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

5 197. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
6 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
7 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
8 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
9 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
10 226.2.

11 **Statutory Wage Violations**

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

23 **Refusal to Make Payment**

24 199. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
25 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
26 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
27 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
28 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*

1 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
2 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
3 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

4 **Standard Conditions of Labor Violations**

5 200. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
6 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
7 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
8 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
9 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
10 minimum/overtime wages and other violations described herein result in separate violations of
11 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
12 1197.1 and 2699.

13 **Violation of Labor Code Section 208**

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

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

23 **Business Expense Violations**

24 203. California law requires employers to indemnify their employees for all necessary
25 expenditures incurred by the employee in direct consequence of the discharge of their duties or of

26 _____
27 ² Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

1 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
2 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
3 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
4 incurred by the employee enforcing the rights granted by this section.”

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

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

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

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

23 208. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
24 Employees have suffered injury in that they were not completely reimbursed as mandated by
25 California law.

26 209. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
27 full reimbursement for all reasonable expenses associated with carrying out their duties required
28 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business

1 expenses in violation of Labor Code section 2802.

2 210. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
3 Employees have suffered injury in that they were not completely reimbursed as mandated by
4 California law.

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

9 **Wage Statement Violations**

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

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

27 214. Moreover, due to violations detailed above, including but not limited to,
28 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide

1 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
2 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
3 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
4 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
5 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
6 compensation earned during the pay period into the regular rate of pay for purposes of calculating
7 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
8 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

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

26 219. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
27 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
28 Employees over whether they received all wages owed to them.

1 220. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
2 they could not easily determine whether they received all wages owed to them and whether they
3 were paid for all hours worked.

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

7 222. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
8 Aggrieved Employees with accurate, itemized wage statements.

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

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

21 **Unlawful Deductions**

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

28 ³ Labor Code § 226.3 (establishing that the civil penalty is ~~40~~ per employee per violation").

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

7 **Reporting Time Pay Violations**

8 227. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

27 **Violation of California Day of Rest Law**

28 231. Under California law, every employee in California is "entitled" to "one day's rest

1 [from labor] in seven"; and, no employer may "cause" its employees "to work more than six days in
2 seven." See Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of
3 the foregoing sections is a misdemeanor.

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

10 **Seating Violations**

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

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

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

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

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

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

28 237. Moreover, based on information and belief, the nature of the work reasonably

1 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
2 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
3 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
4 of seats would not interfere with the performance of their duties.

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

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

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

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

26 241. Based on information and belief, DEFENDANTS charges an additional service
27 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
28 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the

1 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
2 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
3 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
4 constitute a gratuity that is intended to the employees providing the service).

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

8 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

24 **Untimely Payment of Final Wages**

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

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

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

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

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

19 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

26 258. The California Labor Code places certain procedural and substantive limits on an
27 employers’ ability to conduct employee background checks and on how employers can use the
28 information they obtain through those background checks. Labor Code section 1024.5 states that

1 employers, except for financial institutions, may order a credit check only if the individual works
2 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
3 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
4 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
5 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
6 background check, including but not limited to identifying an appropriate reason for the background
7 check, a separate consent form with required disclosures and certain formatting requirements,
8 additional forms such as a summary of rights, a way by which to request a copy of the report, as
9 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

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

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

27 Unlawful Inquires into Criminal History

28 264. Labor Code section 432.7 prohibits an employer from asking applicants about past

1 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
2 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
3 convictions on its employment application, in violation of California law.

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

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

14 Unlawful PAGA Waiver

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

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

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

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

6 **Violation of Labor Code Section 432.6**

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

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

14 273. Labor Code Section 432.6(b) provides in pertinent part:

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

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

24 276. Under the provisions of PAGA and the above mentioned Labor Code sections,
25 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
26 226.7, 245-248.6, 256, 351, 353, 432, 432.5, 432.6, 432.7, 510, 512, 551, 552, 558, 558.1, 1174,
27 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable
28 Wage Orders as well as all interpretations of these laws by California Courts and administrative

bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: March 21, 2024

CROSNER LEGAL, PC

By: 

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Brandon Brouillette, Esq.
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