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8 Attorneys for Plaintiff MARISSA DUFAULT  
on behalf of the State of California and all Aggrieved Employees

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SACRAMENTO**

11 MARISSA DUFAULT, on behalf of the State  
12 of California and all Aggrieved Employees,

13 Plaintiff,

14 v.

15  
16 WENDY'S OF THE PACIFIC, INC., a  
California Corporation; and DOES 1-100,  
17 inclusive,

18 Defendants.

**ELECTRONICALLY FILED**  
Superior Court of California  
County of Sacramento

04/16/2024

By: M. Chapman Deputy

Case No.: **24CV007501**

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

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

### 6 **INTRODUCTION**

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

### 12 **JURISDICTION AND VENUE**

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

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

### 22 **THE PARTIES**

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

25 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for  
26 DEFENDANTS as a non-exempt employee with a job title of bartender and/or a similar title(s)  
27 and/or job position(s) from in or around February 2023, through on or around December 15, 2023.  
28 PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Sacramento, California location(s)

1 which operate under the name(s) "Cal Expo Rock & Brews" and/or "Rock & Brews" and/or "Rock  
2 and Brews".

3 6. Defendant WENDY'S OF THE PACIFIC, INC. is a California Corporation that, at  
4 all relevant times, was authorized to do business within the State of California and is doing business  
5 in the State of California.

6 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the  
7 restaurants, bars, venues and/or other facilities and/or other location(s) in California, including but  
8 not limited to location(s) in Sacramento, California operating under the name(s) "Cal Expo Rock &  
9 Brews" and/or "Rock & Brews". DEFENDANTS operate other restaurants and/or fast-food chains  
10 throughout California operating under different names. DEFENDANTS, through its various  
11 locations, serve the hospitality industry.

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

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

1 **JOINT LIABILITY**

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

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

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

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

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

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

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

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

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

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

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

20 **PAGA ALLEGATIONS**

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

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

1           20.     Aggrieved Employees worked at DEFENDANTS’ restaurants and/or fast-food  
2 chains operating under different brand names throughout California.

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

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

15           22.     PLAINTIFF, on January 10, 2024, through counsel, gave written notice by online  
16 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that  
17 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged  
18 in this Complaint (“PAGA Notice”). PLAINTIFF also mailed the PAGA Notice to  
19 DEFENDANTS’ principal place of business as provided to the California Secretary of State.

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

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

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

### 3 FACTUAL ALLEGATIONS

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

8 27. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for  
9 DEFENDANTS as a non-exempt employee with a job title of bartender and/or a similar title(s)  
10 and/or job position(s) from in or around February 2023, through on or around December 15, 2023.  
11 PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Sacramento, California location(s)  
12 which operate under the name(s) "Cal Expo Rock & Brews" and/or "Rock & Brews" and/or "Rock  
13 and Brews". PLAINTIFF regularly worked at least seven and one-half (7 ½) hours to nine (9) hours  
14 per day hours, at least five (5) to six (6) days per week. DEFENDANTS paid PLAINTIFF an hourly  
15 rate for time counted by DEFENDANTS as hours worked. PLAINTIFF also earned tips as part of  
16 her compensation.

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

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

26 30. Based on information and belief, DEFENDANTS implemented a policy and/or  
27 practice of rounding meal period start and end times and/or automatically deducting at least thirty  
28 minutes per shift for meal periods, despite having actual and/or constructive knowledge that

1 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during  
2 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving  
3 PLAINTIFF and Aggrieved Employees of all wages owed.

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

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

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

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

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

1 owed to Aggrieved Employees.

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

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

9 38. For example, based on information and belief, at times, DEFENDANTS'  
10 biometric/electronic employee time-keeping system malfunctioned such that Aggrieved Employees  
11 were required to either reinitiate and/or otherwise troubleshoot the system prior to being able to  
12 clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from  
13 meal periods, resulting in off-the-clock work and the underpayment of wages owed to Aggrieved  
14 Employees. Based on information and belief, Aggrieved Employees experienced the same issues  
15 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'  
16 control was not recorded and not compensated and resulted in unpaid minimum wages owed to  
17 Aggrieved Employees.

18 39. Moreover, based on information and belief, Aggrieved Employees who opened their  
19 work locations were required to first unlock the doors, turn on all the lights in the restaurant/facility  
20 and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work  
21 and the underpayment of wages owed to Aggrieved Employees. Based on further information and  
22 belief, Aggrieved Employees in charge of closing their location(s) were required to first clock out  
23 for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the  
24 doors. This resulted in additional off-the-clock post-shift work that was not compensated and the  
25 underpayment of wages owed to Aggrieved Employees.

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

1           41.     Based on information and belief, at times, DEFENDANTS require/required  
2 Aggrieved Employees to travel between DEFENDANTS' restaurants, facilities and/or locations  
3 without compensating Aggrieved Employees for the travel time.

4           42.     For example, based on information and belief, due to scheduling issues and/or  
5 understaffing, Aggrieved Employees were at times required after working at their scheduled facility  
6 location to cover a shift at another of DEFENDANTS' restaurants/facilities/locations but were not  
7 compensated for the time spent driving to the second restaurant/facility, resulting in the  
8 underpayment of minimum and overtime wages owed to Aggrieved Employees.

9           43.     Based on information and belief, DEFENDANTS failed to compensate Aggrieved  
10 Employees for all time spent completing DEFENDANTS' required trainings and/or courses (e.g.,  
11 food safety and/or food handler courses) and/or testings and/or certifications (e.g., food handler  
12 certifications).

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

16           45.     Moreover, based on information and belief, DEFENDANTS failed to pay  
17 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split  
18 shifts during the relevant period.

19           46.     For example, based on information and belief, at times, DEFENDANTS required  
20 PLAINTIFF and/or other Aggrieved Employees to work two separate shifts in the same day. Based  
21 on information and belief, DEFENDANTS failed to pay PLAINTIFF and/or other Aggrieved  
22 Employees split shift compensation whenever PLAINTIFF's and/or other Aggrieved Employees'  
23 work schedules were interrupted by non-paid non-working periods established by DEFENDANTS,  
24 which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage  
25 orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be  
26 paid in addition to the minimum wage for that workday...). See, also, Cal. Code Regs. Tit. 8, §  
27 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid  
28 in addition to the minimum wage for that workday, except when the employee resides at the place

1 of employment). DEFENDANTS also failed to separately itemize these split shift premium wages  
2 on PLAINTIFF's and/or other Aggrieved Employees' wage statements, in violation of Labor Code  
3 sections 510, 1194 and all applicable IWC Wage Orders. See  
4 [https://www.dir.ca.gov/dlse/split\\_shift.htm](https://www.dir.ca.gov/dlse/split_shift.htm). (The employer must itemize the premium payment on  
5 the pay stub provided to the employee, and it should be shown as a separate category such as "Split  
6 Shift Premium" and should not be lumped into another category such as wages, bonus, etc.  
7 DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF  
8 and/or other Aggrieved Employees on their wage statements.

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

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

18 49. Based on information and belief, DEFENDANTS rounded PLAINTIFF's total hours  
19 worked to at least the nearest tenth, quarter, half and/or whole hour during most if not all pay periods  
20 PLAINTIFF worked for DEFENDANTS, resulting in DEFENDANTS' failure to compensate  
21 PLAINTIFF for al work time and the underpayment of wages owed to PLAINTIFF.

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

28 51. Based on information and belief, DEFENDANTS had actual and/or constructive  
12  
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1 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to  
2 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the  
3 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation  
4 of California's minimum and overtime wage laws.

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

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

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

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

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

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

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

12           59.     Based on information and belief, Aggrieved Employees were frequently if not always  
13 interrupted during purported meal periods and/or had meal periods cut short/worked through  
14 completely and/or restricted to DEFENDANTS' premises due to the need to continue assigned job  
15 duties.

16           60.     For example, during at least approximately half of PLAINTIFF's shifts, PLAINTIFF  
17 was required to work through part or all of her unpaid meal periods due to the need to complete  
18 assigned job duties.

19           61.     Based on information and belief, DEFENDANTS would unlawfully edit the clock in  
20 and out times for PLAINTIFF's and other Aggrieved Employees' meal periods in order to display  
21 at least a thirty minute off-duty meal period during most if not all shifts worked, notwithstanding  
22 the fact that DEFENDANTS had actual and/or constructive knowledge that DEFENDANTS had  
23 required PLAINTIFF and other Aggrieved Employees' to perform work-related tasks during their  
24 meal periods.

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

1 expectations.

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

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

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

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

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

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

27 69. Based on information and belief, DEFENDANTS had actual and/or constructive  
28 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods

1 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in  
2 violation of California's meal period laws.

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

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

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

18 73. Based on information and belief, DEFENDANTS did not have a have a compliant  
19 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in  
20 practice.

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

25 75. For example, PLAINTIFF was frequently if not always required to work through part  
26 or all of her owed rest periods each shift due to the need to complete assigned job duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 88. Based on information and belief, wage statements issued by DEFENDANTS failed  
28 to accurately list all deductions, in violation of Labor Code Section 226(a)(4).

1           89.     For example, DEFENDANTS issued wage statements to PLAINTIFF that itemize  
2 PLAINTIFF's earned tips under "Deductions," thereby failing to correctly identify all earned gross  
3 and net wages and/or failing to accurately list all deductions in violation of Labor Code section  
4 226(a).

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

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

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

18           93.     For example, DEFENDANTS issued wage statements to PLAINTIFF that identify  
19 "Rock & Brews of the Pacific" as the name of employer. However, no such legal entity by that  
20 name exists. Moreover, the correct name of PLAINTIFF's employer is Wendy's of the Pacific, Inc.  
21 Based on information and belief, DEFENDANTS also issued wage statements to other Aggrieved  
22 Employees that inaccurately listed the brand name(s) of the restaurant and/or fast-food chain instead  
23 of the correct legal name of employer as required under Labor Code Section 226(a)(8). As such,  
24 DEFENDANTS issued inaccurate wage statements to Aggrieved Employees that failed to list the  
25 correct name of the legal entity that is the employer, in violation of Labor Code section 226(a)(8).

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

1 the inclusive dates of the pay period for which the Aggrieved Employee is being paid. For example,  
2 based on information and belief, at times, DEFENDANTS issued wage statements to Aggrieved  
3 Employees containing payment for hours worked during previous pay periods, yet DEFENDANTS'  
4 wage statements do not include the inclusive dates of the accurate pay period for that retroactive  
5 pay, further failing to list the total hours worked for the pay period, including but not limited to, the  
6 total hours worked for the pay period the retroactive pay corresponds with.

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

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

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

16 98. Based on information and belief, at times during the relevant period, DEFENDANTS  
17 failed to provide Aggrieved Employees with any wage statements and/or access to wage statements,  
18 in violation of Labor Code Section 226(a). For example, at times during PLAINTIFF's employment,  
19 DEFENDANTS failed to provide PLAINTIFF with any wage statements and/or access to same.

20 99. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from  
21 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer  
22 to said employee." Based on information and belief DEFENDANTS made unlawful deductions  
23 from Aggrieved Employees paychecks during the relevant period including but not limited to  
24 unlawfully deducting costs of uniforms and/or other business costs and/or unlawfully deducting  
25 wages for purported overpayments from previous pay periods and/or unlawfully deducting tips  
26 and/or unlawfully deducting money pay card fees and/or other fees and/or unlawfully deducting  
27 wages for negligently damaged property. For example, DEFENDANTS' wage statements for  
28 PLAINTIFF show that DEFENDANTS made unlawful deductions from PLAINTIFF's wages,

1 including without limitation, unlawful deductions for work shoes and/or other uniforms (e.g.,  
2 unlawful deduction(s) itemized as “Shoes for Crews”) and/or unlawful deductions from money pay  
3 card fees and/or other fees (e.g., unlawful deduction(s) resulting from deposits made via “Money  
4 Network”). Such a practice is in violation of including but not limited to, Labor Code Sections 221-  
5 222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

6       **100. Failure to Produce Employment Records.** Based on information and belief,  
7 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current  
8 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code  
9 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through  
10 counsel, sent a written request for payroll and personnel records to DEFENDANTS on or around  
11 including but not limited to the following dates: January 11, 2024 and March 6, 2024. Yet,  
12 DEFENDANTS failed to timely produce complete records within the time periods delineated by  
13 California labor law. Based on information and belief, DEFENDANTS failed and continues to fail  
14 to timely produce complete payroll and personnel records when requested by other Aggrieved  
15 Employees. Based on information and belief, DEFENDANTS failed and continue to fail to timely  
16 produce complete time, pay, and personnel records when requested by other Aggrieved Employees.

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

25       **102.** DEFENDANTS have failed and continue to fail to keep accurate and complete  
26 records showing total hours worked by virtue of DEFENDANTS’ time rounding, automatic meal  
27 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and  
28 employer control during unpaid meal periods, failure to record the true start and end times of meal

1 periods, shift start times and shift end times, and other off-the-clock work policies and practices  
2 described herein.

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

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

14       105. For example, on information and belief, Aggrieved Employees received  
15 calls/messages to their personal cell phones/mobile devices from supervisors and/or other  
16 Aggrieved Employees regarding scheduling and/or other work tasks but were not provided any  
17 and/or full reimbursement from DEFENDANTS for this personal cell phone use.

18       106. Based on information and belief, Aggrieved Employees were not reimbursed for the  
19 cost of using their personal phone for work related purposes and/or the cost of purchasing and/or  
20 maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

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

25       108. For example, PLAINTIFF was required to purchase non-slip sole shoes and/or other  
26 uniforms, work clothing, work shoes, protective and/or safety gear yet DEFENDANTS did not  
27 provide PLAINTIFF with any and/or full reimbursement for the expenses PLAINTIFF incurred in  
28 connection with being required to purchase and/or maintain DEFENDANTS' required uniforms,

1 work clothing, work shoes, protective and/or safety gear.

2 109. Based on information and belief, at times, DEFENDANTS required Aggrieved  
3 Employees to use their personal vehicles for work without reimbursing them for the personal vehicle  
4 expenses they incurred in connection therewith.

5 110. For example, based on information and belief, at times, DEFENDANTS required  
6 Aggrieved Employees to travel from one of DEFENDANTS' facilities/restaurants to a second of  
7 DEFENDANTS' facilities/restaurants for work and/or otherwise required Aggrieved Employees to  
8 use their personal vehicles to carry out their assigned job duties, including but not limited to, for  
9 making errands in their personal vehicles for DEFENDANTS' business purposes without  
10 reimbursing Aggrieved Employees for the expenses incurred in connection with DEFENDANTS'  
11 business use of their personal vehicles.

12 111. As explained above, based on information and belief, Aggrieved Employee swere  
13 not reimbursed for the cost of using their personal phone for work related purposes and/or the cost  
14 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal  
15 protective/safety gear.

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

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

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

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

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

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

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

1 been entitled to use the banked sick leave and earn appropriate compensation.

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

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

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

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

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

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

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

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

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

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

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

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

27           129. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period  
28 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353

1 they experienced within the statutory period, and \$200 per pay period for each additional violation.

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

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

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

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

1 section 201-202.

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

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

11       136.   **Unlawful Agreements-Unlawful Criminal History Inquiries.**

12       Unlawful Agreements

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

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

28       139.   By requiring Aggrieved Employees to agree in writing to unlawful provisions as a

1 condition of employment, DEFENDANTS violated Labor Code section 432.5.

2 Unlawful Inquires into Criminal History

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

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

12 Unlawful PAGA Waiver

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

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

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

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

1 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS  
2 required written agreement to an unlawful provision as a condition of employment which is a  
3 violation of labor code section 432.5.

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

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

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

22       **148.** PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

23       **Failure to Keep Accurate Records**

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

28       **150.** At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate  
and complete records as required by law, including but not limited to the following records: total  
daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other

1 Aggrieved Employees began and ended each work period, time records of meal periods, and  
2 accurate itemized wage statements.

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

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

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

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

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25 <sup>1</sup> 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           154.    Personnel Records. In addition to their right to time and pay records, employees, and  
2 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to  
3 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code  
4 section 432 further specifies that employers must furnish copies of all employment records bearing  
5 the employee's signature. Labor Code section 1198.5 also requires that the file be made available  
6 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days  
7 from the date the employer receives a written request." An employer's failure to comply within this  
8 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar  
9 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

10           155.    Based on information and belief, DEFENDANTS fail to timely produce or make  
11 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant  
12 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject  
13 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

14           **Meal Period Violations**

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

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

23           158.    Employers covered by any and all applicable IWC Wage Orders have an obligation  
24 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),  
25 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is  
26 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)  
27 ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4<sup>th</sup> 1004, 1052-1053, citing  
28 section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a

1 rebuttable presumption arises that the employee was not relieved of duty and no meal period was  
2 provided”).

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

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

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

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

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

26 164. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal  
27 periods in violation of California law and/or failed to pay the proper meal period premium for failure  
28 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift

1 differential pay and/or other non-discretionary compensation into the regular rate or compensation  
2 for purposes of calculating the owed meal period premium.

3 165. These unlawful meal period policies and practices result in violations of Labor Code  
4 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject  
5 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable  
6 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §  
7 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

8 **Rest Period Violations**

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

23 167. Moreover, under California law rest periods must be a “net” ten minutes in a suitable  
24 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards  
25 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest  
26 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from  
27 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,  
28 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what

1 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in  
2 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the  
3 “onus is on the employer to clearly communicate the authorization and permission [to take rest  
4 periods] to its employees.”).

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

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

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

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

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

27 173. **Failure to Provide Suitable Resting Facilities**

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

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

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

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

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

18 **Minimum and Overtime Wage Violations**

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

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

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

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

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

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

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

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

1 other Aggrieved Employees.

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

6 **Statutory Wage Violations**

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

18 **Refusal to Make Payment**

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

27 <sup>2</sup> 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           **Standard Conditions of Labor Violations**

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

10           **Business Expense Violations**

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

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

25           191. Further, “any contract or agreement, express or implied, made by any employee to  
26 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive  
27 any employee or his personal representative of any right or remedy to which he is entitled to under

1 the laws of this State.” See Cal. Lab. Code section 2804.

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

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

8 194. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved  
9 Employees have suffered injury in that they were not completely reimbursed as mandated by  
10 California law.

11 195. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with  
12 full reimbursement for all reasonable expenses associated with carrying out their duties required  
13 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business  
14 expenses in violation of Labor Code section 2802.

15 196. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved  
16 Employees have suffered injury in that they were not completely reimbursed as mandated by  
17 California law.

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

22 **Wage Statement Violations**

23 198. California law requires every employer semi-monthly or at the time of each payment  
24 of wages to furnish its employees with an accurate itemized wage statement in writing that contains  
25 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of  
26 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;  
27 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee  
28 is paid; (7) the name of the employee and only the last four digits of his or her social security number

1 or an employee identification number other than a social security number; (8) the name and address  
2 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay  
3 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

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

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

22 201. As explained above, wage statements issued by DEFENDANTS failed to list the  
23 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,  
24 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and  
25 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices  
26 described above), which results in a violation of Labor Code section 226(a).

27 202. Failure to list all hours worked on a wage statement, gives rise to an inference of  
28 injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th

1 1308, 1337).

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

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

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

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

15 207. DEFENDANTS' failure to accurately list all hours worked on all wage statements  
16 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved  
17 Employees over whether they received all wages owed to them.

18 208. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as  
19 they could not easily determine whether they received all wages owed to them and whether they  
20 were paid for all hours worked.

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

24 210. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and  
25 Aggrieved Employees with accurate, itemized wage statements.

26 211. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved  
27 Employees have suffered injury. The absence of accurate information on their wage statements has  
28 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and

1 mathematical computations to determine the amount of wages owed, and will cause difficulty and  
2 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the  
3 submission of inaccurate information about wages and amounts deducted from wages to state and  
4 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to  
5 participate in this lawsuit and create more difficulty and expense from having to reconstruct time  
6 and pay records than if DEFENDANT had complied with its legal obligations.

7         212. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.  
8 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period  
9 during which the statute provisions were violated.<sup>3</sup>

#### 10         **Unlawful Deductions**

11         213. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from  
12 an employee any part of wages theretofore paid by said employer to said employee.” Based on  
13 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees  
14 paychecks during the relevant period. Such a practice is in violation of including but not limited to,  
15 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code  
16 Section 2699.

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

#### 23         **Reporting Time Pay Violations**

24         215. Section 5 of all applicable IWC Wage Orders, provides as follows:

25         216. (A) Each workday an employee is required to report for work and does report, but is  
26 not put to work or is furnished less than half said employee's usual or scheduled day's work, the  
27 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two

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28 <sup>3</sup> Labor Code § 226.3 (establishing that the civil penalty is ~~4~~<sup>3</sup> per employee per violation”).

1 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less  
2 than the minimum wage. (B) If an employee is required to report for work a second time in any one  
3 workday and is furnished less than two (2) hours of work on the second reporting said employee  
4 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the  
5 minimum wage.

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

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

16 **Violation of California Day of Rest Law**

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

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

27 **Seating Violations**

28 221. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be

1 provided with suitable seats when the nature of the work reasonably permits the use of seats and  
2 when they are not actively engaged in the work duties that would not permit them to be seated.

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

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

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

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

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

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

22 226. The Aggrieved Employees worked in various positions. The nature of Aggrieved  
23 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide  
24 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section  
25 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting  
26 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each  
27 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a  
28 separate civil penalty.

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

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

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

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

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

25           **Sick Leave Violations**

26           231. DEFENDANTS violated California's paid sick leave laws including, Labor Code  
27 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to  
28 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to

1 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to  
2 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but  
3 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary  
4 compensation into the sick leave pay rate calculation.

5 232. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees  
6 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor  
7 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used  
8 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and  
9 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

14 234. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records  
15 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all  
16 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees  
17 were entitled to the maximum number of hours accruable.

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

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

24 237. On information and belief, PLAINTIFF alleges that all of these practices were  
25 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

13                   **Violation of Labor Code Section 208**

14           241.     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           242.     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                   **Untimely Payment of Final Wages**

24           243.     California Labor Code section 201(a) provides, in relevant part, that "[i]f an  
25 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and  
26 payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an  
27 employee not having a written contract for a definite period quits his or her employment, his or her  
28 wages shall become due and payable not later than 72 hours thereafter, unless the employee has

1 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled  
2 to his or her wages at the time of quitting.”

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

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

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

18         **Unlawful Agreements/ Unlawful Criminal History Inquiries**

19         247. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall  
20 require any employee or applicant for employment to agree, in writing, to any term or condition  
21 which is known by such employer...to be prohibited by law.” DEFENDANTS required and  
22 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful  
23 conditions of employment including but not limited to unlawful non-solicitation/non-compete  
24 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or  
25 waivers, including but not limited to, unlawful meal period waivers, unlawful forum selection  
26 clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial  
27 checks as a condition of obtaining and/or continuing employment in violation of Labor Code section  
28 432.5.

1           248. By requiring that Aggrieved Employees sign off on unlawful agreements as a  
2 condition of employment, DEFENDANTS violated Labor Code section 432.5.

3                   Unlawful Inquires into Criminal History

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

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

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

18                   Unlawful PAGA Waiver

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

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

28           254. Moreover, the California Supreme Court has ruled that a court cannot compel

1 arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an  
2 individual PAGA claim. *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 ("There is  
3 no individual component to a PAGA action because 'every PAGA action ... is a representative  
4 action on behalf of the state.'")

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

10 **Violation of Labor Code Section 432.6**

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

15 257. Labor Code Section 432.6(a) provides: "[A] person shall not, as a condition of  
16 employment, continued employment, or the receipt of any employment-related benefit, require any  
17 applicant for employment or any employee to waive any right..."

18 258. Labor Code Section 432.6(b) provides in pertinent part:

19 259. "An employer shall not threaten, retaliate, or discriminate against, or terminate any  
20 applicant for employment or any employee because of the refusal to the waiver of any right..."

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

28 261. Under the provisions of PAGA and the above mentioned Labor Code sections,  
51  
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS  
GENERAL ACT

1 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,  
2 226.7, 227.3, 245-248.6, 256, 351, 353, 432, 432.5, 432.6, 432.7, 510, 512, 551, 552, 558, 558.1,  
3 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all  
4 applicable Wage Orders as well as all interpretations of these laws by California Courts and  
5 administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS  
6 are liable for the following penalties:

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

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

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1 **PRAYER FOR RELIEF**

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

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

11  
12 Dated: April 16, 2024

**CROSNER LEGAL, PC**

13  
14 By: \_\_\_\_\_



15 Jamie K. Serb, Esq.  
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