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on behalf of the State of California and Aggrieved Employees and Class Members

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

ARION NEILL and DAVE COLMENARES,
on behalf of the State of California and
Aggrieved Employees,

Plaintiffs,

v.

BOOT BARN, INC., a Delaware
Corporation; BOOT BARN HOLDINGS,
INC., a Delaware Corporation; and DOES 1-
100, inclusive,

Defendants.

Case No.: CVRI2402537

**PLAINTIFFS' FIRST AMENDED CLASS
AND REPRESENTATIVE COMPLAINT
FOR:**

- 1. Recovery of Unpaid Minimum Wages and Liquidated Damages**
- 2. Recovery of Unpaid Overtime Wages**
- 3. Failure to Provide Meal Periods or Compensation in Lieu Thereof**
- 4. Failure to Provide Rest Periods or Compensation in Lieu Thereof**
- 5. Failure to Furnish Accurate Itemized Wage Statements**
- 6. Failure to Timely Pay Wages Upon Termination**
- 7. Failure to Reimburse Business Expenses**
- 8. Unfair Competition *and***
- 9. Violation of the Private Attorneys General Act, Cal. Labor Code Sections 2698, *et seq.***

1 Plaintiffs ARION NEILL, DAVE COLMENARES, and CATHERINE GARRITSON
2 (“PLAINTIFFS”), on behalf of the State of California and Aggrieved Employees (as defined below)
3 and Class Members (defined below), hereby file this First Amended Complaint against Defendants
4 BOOT BARN, INC., a Delaware Corporation; BOOT BARN HOLDINGS, INC., a Delaware
5 Corporation; and DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”).
6 PLAINTIFFS are informed and believe and thereon allege as follows:

7 **JURISDICTION AND VENUE**

8 1. This Court has jurisdiction over PLAINTIFFS’ claims for penalties pursuant to
9 California statutes, including but not limited to the PAGA, and decisional law and regulations.

10 2. Venue is proper in the County of Riverside pursuant to sections 395 and 395.5 of the
11 California Code of Civil Procedure because DEFENDANTS transact business within this judicial
12 district, DEFENDANTS operate locations within this judicial district, and conduct alleged by
13 PLAINTIFFS herein occurred in this this judicial district. See also *Crestwood Behavioral Health,*
14 *Inc. v. Superior Court* (2021) 60 Cal. App. 5th 1069 (venue in a PAGA action is proper in any
15 county where the defendants committed Labor Code violations against some of its employees).
16 Venue is also proper pursuant to section 393 of the California Code of Civil Procedure because the
17 cause, or some part of the cause, arose in the County of Riverside.

18 **THE PARTIES**

19 3. PLAINTIFFS are, and at all relevant times, were individuals domiciled in the State
20 of California and a citizen of the State of California.

21 4. PLAINTIFFS are current employees of DEFENDANTS. PLAINTIFFS worked for
22 DEFENDANTS as non-exempt employees.

23 5. PLAINTIFF ARION NEILL (“PLAINTIFF NEILL”) worked for DEFENDANTS
24 as a sales associate and inventory control associate and/or similar title(s) and/or position(s) from in
25 or around 2022 and continuing through the present. PLAINTIFF NEILL regularly worked at least
26 four (4) to nine (9) hours per day, at least three (3) to five (5) days per week. PLAINTIFF NEILL
27 worked for DEFENDANTS at DEFENDANTS’ Oceanside location(s), which operates under the
28 name “Boot Barn”.

1 6. PLAINTIFF DAVE COLMENARES (“PLAINTIFF COLMENARES”) worked for
2 DEFENDANTS as a sales associate and/or similar title(s) and/or position(s) from in or around 2018
3 and continuing through the present. PLAINTIFF COLMENARES regularly worked at least seven
4 and one-half (7 ½) hours per day, at least five (5) days per week. PLAINTIFF COLMENARES
5 worked for DEFENDANTS at DEFENDANTS’ Clovis location(s), which operates under the name
6 “Boot Barn”.

7 7. PLAINTIFF CATHERINE GARRITSON (“PLAINTIFF GARRITSON”) worked
8 for Defendants as a sales associate and/or similar title(s) and/or position(s) from in or around 2022,
9 and until December 2024. PLAINTIFF GARRITSON regularly worked at least five and one-half
10 (5 ½) hours per day, at least days (3) days per week. PLAINTIFF GARRITSON worked for
11 DEFENDANTS at DEFENDANTS’ Escondido location(s), which operates under the name “Boot
12 Barn”.

13 8. Defendant BOOT BARN, INC. is a Delaware Corporation that, at all relevant times,
14 was authorized to do business within the State of California and is doing business in the State of
15 California.

16 9. Defendant BOOT BARN HOLDINGS, INC. is a Delaware Corporation that, at all
17 relevant times, was authorized to do business within the State of California and is doing business in
18 the State of California.

19 10. DEFENDANTS own, operate, manage and/or staff its employees to work at the
20 hospitals, medical centers, surgery centers, imaging centers, lab facilities, offices and/or other
21 facilities and/or other location(s) in California, including but not limited to the hospitals, medical
22 centers, surgery centers, imaging centers, lab facilities, offices and/or other facilities in Simi Valley,
23 California. DEFENDANTS, through its various s/other locations serves the health care industry.

24 11. The true names and capacities of the DOE Defendants sued herein as DOES 1
25 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
26 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
27 responsible for the unlawful acts alleged herein. PLAINTIFFS will seek leave of Court to amend
28 this Complaint to reflect the true names and capacities of the Doe Defendants when such identities

1 become known.

2 12. PLAINTIFFS are further informed and believe that, at all relevant times, each
3 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
4 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
5 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
6 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
7 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
8 complaint. PLAINTIFFS are further informed and believes and thereon alleges that each Defendant
9 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
10 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
11 controlled, aided and abetted the conduct of all other Defendants.

12 **JOINT LIABILITY**

13 13. Under California law, the definition of the terms “to employ” are broadly construed
14 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
15 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
16 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
17 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
18 was to reach situations in which multiple entities control different aspects of the employment
19 relationship. Supervision of the work, in the specific sense of exercising control over how services
20 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
21 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
22 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
23 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
24 California, applying a less stringent standard to what constitutes sufficient control by a business
25 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
26 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
27 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
28

1 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
2 employment,” *Id.* at 875 [emphasis added].

3 14. During PLAINTIFFS’ employment by DEFENDANTS, PLAINTIFFS and other
4 Aggrieved Employees (defined below) and Class Members (defined below) were jointly employed
5 by DEFENDANTS for purposes of the Wage Orders, under the alternative definitions of “to
6 employ” adopted by the California Supreme Court in *Martinez*, supra. As discussed below, these
7 DEFENDANTS (1) exercised control over wages, hours and working conditions of PLAINTIFFS
8 and Aggrieved Employees and Class Members; (2) suffered or permitted PLAINTIFFS and
9 Aggrieved Employees and Class Members to work for them; and (3) engaged PLAINTIFFS and
10 Aggrieved Employees and Class Members to work for them.

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

24 16. PLAINTIFFS are informed and believe, and thereon alleges that at all times relevant
25 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFFS and Aggrieved
26 Employees and Class Members upon whose behalf PLAINTIFFS brings these allegations and cause
27 of action, in that DEFENDANTS, exercised sufficient control over PLAINTIFFS and the Aggrieved
28 Employees and Class Members’ wages, hours and working conditions, and/or suffered or permitted

1 them to work so as to be considered the joint employers of PLAINTIFFS and Aggrieved Employees
2 and Class Members.

3 17. For example, DEFENDANTS, and each of them maintain the same principal place
4 of business and agent for service of process as provided to the California Secretary of State, and
5 based on information and belief DEFENDANTS, and each of them, utilize some of the same
6 attorneys and/or human resources personnel to oversee employment-related matters. Upon
7 information and belief, PLAINTIFFS allege that DEFENDANTS created a uniform set of policies,
8 practices and/or procedures concerning, inter alia, hourly and overtime pay, time-keeping practices,
9 meal and rest periods, reimbursement of business expenses and other working conditions that were
10 distributed to, and/or applied to PLAINTIFFS and Aggrieved Employees and Class Members, and
11 further that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFFS and
12 other Aggrieved Employees and Class Members in a uniform manner. DEFENDANTS collectively
13 represented to PLAINTIFFS and other Aggrieved Employees and Class Members that each was an
14 "at-will" employee of DEFENDANTS, and that DEFENDANTS collectively retained the right to
15 terminate PLAINTIFFS' and other Aggrieved Employees and Class Members' employment with or
16 without cause. Upon information and belief, DEFENDANTS further collectively represented to
17 PLAINTIFFS and Aggrieved Employees and Class Members in writing the details of their
18 compensation, and the manner in which they were to take meal and rest periods, the procedures
19 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
20 to PLAINTIFFS and Aggrieved Employees and Class Members by which DEFENDANTS
21 collectively would evaluate their wage rates.

22 18. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
23 and working conditions of PLAINTIFFS and Aggrieved Employees and Class Members. As such,
24 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFFS' and
25 the Aggrieved Employees and Class Members' employment, including the instrumentality that
26 resulted in the illegal conduct for which PLAINTIFFS seek relief in this Complaint.

27 19. PLAINTIFFS are informed and believe that DEFENDANTS exercised the same
28 control over, applied the same policies and practices, and engaged in the same acts and omissions

with regard to the other Aggrieved Employees and Class Members.

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

21. By reason of their status as joint employers of PLAINTIFFS and Aggrieved Employees and Class Members, DEFENDANTS are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to Aggrieved Employees and Class Members.

PAGA ALLEGATIONS

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

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

23. PLAINTIFFS are each an “aggrieved employee,” as that term is defined under Labor Code section 2699(c), as PLAINTIFFS were each employed by DEFENDANTS during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, PLAINTIFFS seek to recover on behalf of the State of California, and Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFFS have standing to bring a PAGA cause of action on behalf of the State and Aggrieved Employees, as PLAINTIFFS were jointly employed by DEFENDANTS and are thereby affected by one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.*

1 (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known
2 violations committed by the employer – regardless of whether Plaintiff experienced all violations
3 personally. *Id.* at 760-761.

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

5 24. PLAINTIFF NEILL and PLAINTIFF COLMENARES, on February 16, 2024,
6 through counsel, gave written notice by online filing with the California Labor and Workforce
7 Development Agency (“LWDA”) informing it that DEFENDANTS failed to comply with
8 California’s labor laws with regard to the allegations alleged in this Complaint (“PAGA Notice”).
9 The PAGA Notice was also sent to DEFENDANTS via certified mail.

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

16 26. The PAGA Notice outlined PLAINTIFF NEILL and PLAINTIFF COLMENARES’s
17 claims for violations of the California Labor Code and the applicable wage orders on behalf of
18 PLAINTIFFS, the State of California and Aggrieved Employees.

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

23 **CLASS ALLEGATIONS**

24 28. PLAINTIFFS bring this action on behalf of PLAINTIFFS, and all others similarly
25 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFFS
26 seek to represent are defined as follows and referred to as the “Class” or “Class Members”:

27
28 All current and former non-exempt employees that worked either directly or via a staffing agency

1 for any one or more of the DEFENDANTS at any location in California at any time within the four
2 years prior to the filing of the initial Complaint (“Class Period”).

3
4 a. Numerosity. While the exact number of Class Members is unknown to
5 PLAINTIFFS at this time, the Class is so numerous that the individual joinder
6 of all members is impractical under the circumstances of this case. PLAINTIFFS
7 are informed and believe the Class consists of at least 100 individuals.

8 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
9 because common questions of law and fact predominate over individual issues.
10 Common questions include, but are not limited to, the following: (1) whether
11 DEFENDANTS understated hours worked and failed to pay all amounts due to
12 PLAINTIFFS and the Class Members for wages earned, including minimum
13 and overtime wages, under California law; (2) whether DEFENDANTS
14 provided PLAINTIFFS and the Class Members with all meal periods or
15 premium payments in lieu thereof in compliance with California law; (3)
16 whether DEFENDANTS provided PLAINTIFFS and the Class Members with
17 all rest periods or premium payments in lieu thereof, in compliance with
18 California law; (4) whether DEFENDANTS provided PLAINTIFFS and Class
19 Members with accurate, itemized wage statements in compliance with
20 California law, displaying, including but not limited to, the total hours worked
21 during the pay period; (5) whether DEFENDANTS failed to reimburse
22 PLAINTIFFS and the Class Members for all business expenses; and (6) whether
23 DEFENDANTS violated California Business and Professions Code sections
24 17200, *et seq.*

25 c. Ascertainable Class. The proposed Class is ascertainable as members can be
26 identified and located using information in DEFENDANTS’ business, payroll
27 and personnel records.

28 d. Typicality. PLAINTIFF’s claims are typical of the claims of the Class Members.

1 PLAINTIFFS suffered a similar injury as members of the Class as a result of
2 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
3 and pay all owed minimum and overtime wages, failure to provide proper meal
4 periods and rest periods or premium compensation in lieu thereof, failure to
5 provide accurate wage statements, and failure to reimburse business expenses.

6 e. Adequacy. PLAINTIFFS will fairly and adequately protect the interests of the
7 Class Members. PLAINTIFFS have no interests adverse to the interests of the
8 other Class Members. Counsel who represent PLAINTIFFS are competent and
9 experienced in litigating similar class action cases and are California lawyers in
10 good standing. Counsel for PLAINTIFFS have the experience and resources to
11 vigorously prosecute this case.

12 f. Superiority. A class action is superior to other available means for the fair and
13 efficient adjudication of this controversy since individual joinder of all members
14 of the class is impractical. Class action treatment will permit a large number of
15 similarly situated persons to prosecute their common claims in a single forum
16 simultaneously, efficiently, and without the unnecessary duplication of effort
17 and expense that numerous individual actions would engender. Furthermore, as
18 the damages suffered by each individual member of the Class may be relatively
19 small, the expenses and burden of individual litigation would make it difficult
20 or impossible for individual members of the Class to redress the wrongs done to
21 them, while an important public interest will be served by addressing the matter
22 as a class action. The cost to the court system of adjudication of such
23 individualized litigation would be substantial. Individualized litigation would
24 also present the potential for inconsistent or contradictory judgments. Finally,
25 the alternative of filing a claim with the California Labor Commissioner is not
26 superior, given the lack of discovery in such proceedings, the fact that there are
27 fewer available remedies, and the losing party has the right to a trial de novo in
28 the Superior Court.

1
2 **FACTUAL ALLEGATIONS**

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

7 30. PLAINTIFF NEILL worked for DEFENDANTS as a sales associate and inventory
8 control associate and/or similar title(s) and/or position(s) from in or around 2022 and continuing
9 through the present. PLAINTIFF NEILL regularly worked at least four (4) to nine (9) hours per
10 day, at least three (3) to five (5) days per week. PLAINTIFF NEILL worked for DEFENDANTS at
11 DEFENDANTS' Oceanside location(s), which operates under the name "Boot Barn".

12 31. PLAINTIFF COLMENARES worked for DEFENDANTS as a sales associate and/or
13 similar title(s) and/or position(s) from in or around 2018 and continuing through the present.
14 PLAINTIFF COLMENARES regularly worked at least seven and one-half (7 ½) hours per day, at
15 least five (5) days per week. PLAINTIFF COLMENARES worked for DEFENDANTS at
16 DEFENDANTS' Clovis location(s), which operates under the name "Boot Barn".

17 32. PLAINTIFF CATHERINE GARRITSON ("PLAINTIFF GARRITSON") worked
18 for Defendants as a sales associate and/or similar title(s) and/or position(s) from in or around 2022,
19 and until December 2024. PLAINTIFF GARRITSON regularly worked at least five and one-half
20 (5 ½) hours per day, at least days (3) days per week. PLAINTIFF GARRITSON worked for
21 DEFENDANTS at DEFENDANTS' Escondido location(s), which operates under the name "Boot
22 Barn".

23 33. At all relevant times, PLAINTIFFS were non-exempt employees that were paid on
24 an hourly basis for time counted by DEFENDANTS as hours worked. PLAINTIFFS were also
25 compensated with commissions and/or spiffs and/or other non-discretionary compensation (e.g.,
26 based on certain products/brands sold).

27 34. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
28 PLAINTIFFS and Aggrieved Employees and Class Members for all hours worked, resulting in the

1 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate
2 PLAINTIFFS and Aggrieved Employees and Class Members for all hours worked by virtue of,
3 DEFENDANTS' automatic deduction and time rounding policies, and failure to relieve employees
4 of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed
5 or improper meal periods, as explained below.

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

12 36. Based on information and belief, Aggrieved Employees and Class Members were
13 not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to
14 scheduled hours worked instead of actual time worked, time rounding policies and practices, and/or
15 mandated off-the clock work policies and/or practices.

16 37. For example, based on information and belief, DEFENDANTS suffered, permitted,
17 explicitly instructed and/or otherwise required Aggrieved Employees and Class Members to
18 perform pre-shift and/or post-shift off-the-clock work/off-the-clock work outside of scheduled shift
19 times, such as but not limited to, completing paperwork and/or data entry, cleaning and/or setting
20 up DEFENDANTS' facilities, purchasing supplies, completing mandatory trainings outside of work
21 hours, and/or making and/or responding to work-related communications and/or completing other
22 off-the-clock work tasks that were neither recorded nor compensated, resulting in DEFENDANTS'
23 failure to pay Aggrieved Employees and Class Members for all hours worked and the underpayment
24 of minimum wages and overtime wages owed to Aggrieved Employees and Class Members.

25 38. Based on information and belief, prior to beginning a scheduled shift, Aggrieved
26 Employees and Class Members were required to start and/or boot all of DEFENDANTS' computer
27 systems, phone systems / applications and/or software so as to have all systems running at the start
28 of the scheduled shift. As such, based on information and belief, Aggrieved Employees and Class

1 Members at times spent at least 10-15 minutes before each scheduled shift preparing and/or
2 troubleshooting different work applications in order to clock in and begin their shifts. This pre-shift
3 work was off-the-clock and uncompensated resulting in unpaid minimum and overtime wages.

4 39. Based on information and belief, at times, DEFENDANTS' electronic employee
5 time-keeping system/app malfunctioned such that Aggrieved Employees and Class Members were
6 required to either reinitiate and/or otherwise troubleshoot the system prior to being able to clock in
7 and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal
8 periods, resulting in off-the-clock work and the underpayment of wages owed to Aggrieved
9 Employees and Class Members. Based on information and belief, Aggrieved Employees and Class
10 Members experienced the same issues when clocking out for shifts and/or back in for meal periods.
11 This time spent under DEFENDANTS' control was not recorded and not compensated and resulted
12 in unpaid minimum wages owed to Aggrieved Employees and Class Members.

13 40. Based on information and belief, at times, Aggrieved Employees and Class Members
14 were required to wait in line behind other Aggrieved Employees and Class Members to access
15 DEFENDANTS' time-keeping system and/or terminal so they could then clock in for the start of
16 their shifts which said waiting time spent under DEFENDANTS' control that was neither recorded
17 nor compensated, resulting in DEFENDANTS' failure to compensate Aggrieved Employees and
18 Class Members for all time worked and the underpayment of minimum wages and overtime wages
19 owed to Aggrieved Employees and Class Members.

20 41. Based on information and belief, DEFENDANTS did not compensate Aggrieved
21 Employees and Class Members for all time spent donning and doffing personal protective
22 equipment, safety equipment and/or uniforms/work clothing (e.g., headwear/hats, gloves,
23 goggles/safety glasses and/or face masks) during meal periods, before the start of a scheduled shift,
24 and after completing a scheduled shift, resulting in DEFENDANTS' failure to pay Aggrieved
25 Employees and Class Members for all work time and the underpayment of minimum wages and
26 overtime wages owed to Aggrieved Employees and Class Members.

27 42. Based on information and belief, Aggrieved Employees and Class Members were
28 required to undergo security screenings and/or other mandated screenings before and/or after a

1 scheduled shift and/or before or after clocking in/out for work, resulting in pre-shift and/or post-
2 shift off-the-clock work.

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

7 44. Moreover, based on information and belief, Aggrieved Employees and Class
8 Members who opened their work locations were required to wait for another employee before
9 entering the premises and/or first open the security gate, unlock the doors, turn on all the lights in
10 the store/facility and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-
11 the-clock work and the underpayment of wages owed to Aggrieved Employees and Class Members.
12 Based on further information and belief, Aggrieved Employees and Class Members in charge of
13 closing their location(s) were required to first clock out for their shifts before enabling the alarm,
14 turning off all the lights in the facility and/or locking the doors, and/or checking all other employees
15 had exited. This resulted in additional off-the-clock post-shift work that was not compensated and
16 the underpayment of wages owed to Aggrieved Employees and Class Members.

17 45. Based on information and belief, at times, Aggrieved Employees and Class Members
18 were required to complete other work tasks outside of their reported work time, before clocking in
19 for the start of their shift and/or after clocking out for the end of their shift and/or otherwise outside
20 of their scheduled shift times resulting in DEFENDANTS' failure to compensate Aggrieved
21 Employees and Class Members for all hours worked and the underpayment of minimum wages and
22 overtime wages to Aggrieved Employees and Class Members.

23 46. For example, based on information and belief, Aggrieved Employees and Class
24 Members were required to complete off-the-clock work outside of scheduled shifts due to, including
25 but not limited to, work-related phone calls and/or messages they received to their phones and were
26 required to respond to, including but not limited to, communications from supervisors and/or other
27 Aggrieved Employees and Class Members regarding scheduling and/or other work tasks, resulting
28 in the underpayment of minimum and overtime wages owed to Aggrieved Employees and Class

1 Members.

2 47. For example, based on information and belief, PLAINTIFFS were required to
3 complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-
4 related phone calls and/or messages they received to their phones and were required to respond to,
5 including but not limited to, communications from supervisors and/or other Aggrieved Employees
6 and Class Members regarding scheduling and/or other work tasks, resulting in the underpayment of
7 minimum and overtime wages owed to PLAINTIFFS.

8 48. Based on information and belief, at times, DEFENDANTS require/required
9 Aggrieved Employees and Class Members to travel between DEFENDANTS' stores, facilities
10 and/or locations without compensating Aggrieved Employees and Class Members for the travel
11 time. For example, based on information and belief, due to scheduling issues and/or understaffing,
12 Aggrieved Employees and Class Members were at times required after working at their scheduled
13 facility location to cover a shift at another of DEFENDANTS' stores/facilities/locations but were
14 not compensated for the time spent driving to the second store/facility, resulting in the underpayment
15 of minimum and overtime wages owed to Aggrieved Employees and Class Members.

16 49. Based on information and belief, DEFENDANTS engaged in systemic time record
17 manipulation to shave time worked off PLAINTIFFS and other Aggrieved Employees and Class
18 Members' workdays, by, for example, editing written and/or electronic time records to delete
19 portions of total hours worked or otherwise understate actual hours worked by PLAINTIFFS and
20 other Aggrieved Employees and Class Members.

21 50. Based on information and belief, at times, DEFENDANTS instituted a piece-rate-
22 based compensation scheme that resulted in pay periods during which Aggrieved Employees and
23 Class Members were denied the minimum wage for all hours worked. For example, on information
24 and belief, at times, DEFENDANTS paid Aggrieved Employees and Class Members on a strictly
25 commission and/or piece-rate basis (e.g., per sale completed/brand sold and/or using a flagged hour
26 basis), at least during some pay periods, during the relevant time period. However, based on
27 information and belief, DEFENDANTS failed to separately compensate Aggrieved Employees and
28 Class Members for all non-piece rate related activities/all non-productive time, including but not

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

11 51. Based on information and belief, DEFENDANTS failed to pay Aggrieved
12 Employees and Class Members the applicable minimum wage for the county and/or city within
13 which the Aggrieved Employee worked in California.

14 52. Moreover, based on information and belief, DEFENDANTS failed to pay Aggrieved
15 Employees and Class Members split shift premium wages when they worked split shifts during the
16 relevant period. For example, based on information and belief, at times, DEFENDANTS required
17 Aggrieved Employees and Class Members to work two separate shifts in the same day. Based on
18 information and belief, DEFENDANTS failed to pay Aggrieved Employees and Class Members
19 split shift compensation whenever PLAINTIFFS' and/or other Aggrieved Employees and Class
20 Members' work schedules were interrupted by non-paid non-working periods established by
21 DEFENDANTS, which resulted in a violation of the applicable Wage Order (See section 4 of all
22 applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum
23 wage shall be paid in addition to the minimum wage for that workday...). See, also, Cal. Code Regs.
24 Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall
25 be paid in addition to the minimum wage for that workday, except when the employee resides at the
26 place of employment). DEFENDANTS also failed to separately itemize these split shift premium
27 wages on PLAINTIFFS' and/or other Aggrieved Employees and Class Members' wage statements,
28 in violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders. See,

1 https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on
2 the pay stub provided to the employee, and it should be shown as a separate category such as “Split
3 Shift Premium” and should not be lumped into another category such as wages, bonus, etc.
4 DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFFS
5 and/or other Aggrieved Employees and Class Members on their wage statements.

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

11 54. Based in information and belief, DEFENDANTS implemented a time-rounding
12 system that as applied systematically deprived PLAINTIFFS and other Aggrieved Employees and
13 Class Members of compensable time because the time-rounding system implemented by
14 DEFENDANTS would almost always, if not always, result in understating actual compensable work
15 time.

16 55. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
17 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
18 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
19 minimum wages owed to PLAINTIFFS and Aggrieved Employees and Class Members as well as
20 unpaid overtime wages for those Aggrieved Employees and Class Members who worked more than
21 eight (8) hours in a day and/or more than forty (40) hours in a week.

22 56. Based on information and belief, DEFENDANTS had actual and/or constructive
23 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
24 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
25 underpayment of minimum wages and overtime wages owed to Aggrieved Employees and Class
26 Members, in violation of California's minimum and overtime wage laws.

27 57. Based on information and belief, DEFENDANTS failed and continue to fail to pay
28 Aggrieved Employees and Class Members two times their regular rate of pay for time worked

beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

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

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

60. For example, based on information and belief, Aggrieved Employees and Class Members earned non-discretionary bonuses/incentive pay (e.g., non-discretionary production-based bonuses) and/or other non-discretionary compensation, however, DEFENDANTS failed to factor all non-discretionary compensation into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation of the owed overtime rate(s) of pay and the underpayment of overtime wages owed to Aggrieved Employees and Class Members.

61. DEFENDANTS did not make available to the Aggrieved Employees and Class Members a reasonable protocol for correcting time records when the Aggrieved Employees and Class Members worked overtime hours or to fix incorrect time entries or those that DEFENDANTS unlawfully under-recorded to the Aggrieved Employees' and Class Members' detriment.

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

1 63. Based on information and belief, DEFENDANTS failed to provide Aggrieved
2 Employees and Class Members who were compensated on a commission basis with proper written
3 commission agreements, in violation of Labor Code section 2751.

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

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

22 66. **Meal Period Violations.** PLAINTIFFS and other Aggrieved Employees and Class
23 Members consistently worked shifts of at least five and one-half hours or more, entitling them to at
24 least one meal period. However, PLAINTIFFS and other Aggrieved Employees and Class Members
25 would not receive legally compliant thirty (30) minute first and second meal periods. Based on
26 information and belief, Aggrieved Employees and Class Members were consistently unable to take
27 timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal
28 periods, interrupted meal periods, and/or work through part or all their meal periods due to

1 understaffing, the nature and constraints of their job duties and/or commentary from supervisors
2 pressuring them to take non-compliant meal periods or skip meal periods completely.

3 67. For example, based on information and belief, Aggrieved Employees and Class
4 Members were forced to take late meal periods in order to complete assigned job duties. Based on
5 information and belief, Aggrieved Employees and Class Members were at times interrupted during
6 purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS'
7 premises due to the need to continue assigned job duties.

8 68. For example, at times, PLAINTIFF NEILL was required to take her meal period after
9 working more than five (5) hours due to the need to complete assigned job duties.

10 69. DEFENDANTS also required PLAINTIFFS to record that PLAINTIFFS had taken
11 at least a thirty-minute meal period and/or would unlawfully edit the clock in and out times for
12 PLAINTIFFS and/or other Aggrieved Employees and Class Members' meal periods in order to
13 display at least a thirty-minute off-duty meal period during most if not all shifts worked,
14 notwithstanding the fact that DEFENDANTS had actual and/or constructive knowledge that
15 DEFENDANTS had required PLAINTIFFS and other Aggrieved Employees and Class Members
16 to perform work-related tasks during their unpaid meal periods.

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

22 71. Based on information and belief, DEFENDANTS implemented policies and/or
23 practices that failed to relieve Aggrieved Employees and Class Members of all duties and
24 DEFENDANTS' control during unpaid meal periods.

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

1 unaccounted pre-shift off-the-clock work.

2 73. Further, on information and belief, DEFENDANTS instructed the Aggrieved
3 Employees and Class Members to confirm in DEFENDANTS' timekeeping system that they took
4 a compliant meal period regardless of whether they did.

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

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

14 76. For example, based on information and belief, when Aggrieved Employees and Class
15 Members worked more than ten (10) and/or twelve (12) hours in a shift, they were not provided
16 with any version of a second meal period.

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

21 78. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
22 records of the true start and end times of PLAINTIFFS' and Aggrieved Employees and Class
23 Members' meal periods. Based on information and belief, to the extent meal periods were recorded,
24 DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in
25 PLAINTIFFS and other Aggrieved Employees and Class Members not being paid for all time
26 worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021)
27 11 Cal.5th 58.

28 79. Based on information and belief, DEFENDANTS had actual and/or constructive

1 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods
2 that were free of DEFENDANTS' control owed to PLAINTIFFS and other Aggrieved Employees
3 and Class Members, in violation of California's meal period laws.

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

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

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

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

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

27 85. For example, PLAINTIFF NEILL was frequently if not always unable to take
28 compliant rest periods due to her need to complete assigned job duties and/or was unable to take net

1 ten-minute rest periods in a suitable rest area and/or had purported rest periods restricted to
2 DEFENDANTS' premises.

3 86. Based on information and belief, any purported rest periods were interrupted, cut
4 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of
5 their job duties, and/or commentary from supervisors pressuring them to skip rest periods
6 completely and/or take non-compliant rest periods. Moreover, based on information and belief,
7 DEFENDANTS failed to provide any form of a third rest period on shifts lasting longer than ten
8 hours.

9 87. Based on information and belief, DEFENDANTS implemented policies and/or
10 practices that failed to relieve PLAINTIFFS and other Aggrieved Employees and Class Members
11 of all duties and DEFENDANTS' control during rest periods.

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

15 89. On information and belief, DEFENDANTS instructed the Aggrieved Employees and
16 Class Members to confirm in DEFENDANTS' timekeeping system that they took a compliant rest
17 break regardless of whether they did.

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

26 91. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC
27 Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the
28 Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the

1 toilet rooms and shall be available to employees during work hours.”

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

11 93. DEFENDANTS did not provide Aggrieved Employees and Class Members with
12 suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

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

16 95. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
17 provide PLAINTIFFS and other Aggrieved Employees and Class Members with accurate wage
18 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
19 PLAINTIFFS and Aggrieved Employees and Class Members with meal and rest periods that
20 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFFS
21 and Aggrieved Employees and Class Members failed and continue to fail to correctly set forth the
22 gross wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in
23 effect during the pay period and the corresponding number of hours worked at each hourly rate by
24 the employee.

25 96. DEFENDANTS issued wage statements to PLAINTIFFS and other Aggrieved
26 Employees and Class Members that also failed to indicate the earned gross and net wages earned
27 during the pay period, the correct applicable rates of pay for all hours worked, and the total hours
28 worked by PLAINTIFFS and Aggrieved Employees and Class Members (by virtue of rounded time

1 entries, automatic deduction for meal periods/failure to relieve Aggrieved Employees and Class
2 Members of all duties and employer control during unpaid meal periods, payment according to
3 scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies
4 and practices described above) which results in a violation of Labor Code section 226(a).

5 97. Separately, and independent of the above allegations, based on information and
6 belief, DEFENDANTS issued wage statements to Aggrieved Employees and Class Members that
7 failed to list the total hours worked during the pay period, in violation of, including but not limited
8 to, Labor Code section 226(a)(2).

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

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

18 100. Based on information and belief, DEFENDANTS issued wage statements to
19 Aggrieved Employees and Class Members that failed to list the number of piece-rate units earned
20 and any applicable piece rate(s) of pay, in violation of Labor Code section 226(a)(3).

21 101. Based on information and belief, DEFENDANTS issued wage statements that failed
22 to accurately list all deductions, in violation of Labor Code section 226(a)(4).

23 102. Moreover, based on information and belief, DEFENDANTS issued wage statements
24 to PLAINTIFFS and Aggrieved Employees and Class Members that further violate Labor Code
25 section 226(a), by among other things, failing to list the correct name and/or address of the legal
26 entity that is the employer, in violation of Labor Code section 226(a)(8).

27 103. As such, DEFENDANTS' issued wage statements to Aggrieved Employees and
28 Class Members that did not include all of the statutorily required information, including but not

1 limited to, the correct name and/or address of the legal entity that is the employer.

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

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

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

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

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

1 described herein.

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

6 110. For example, PLAINTIFFS, through counsel, sent a written request for payroll and
7 personnel records to DEFENDANTS on or around including but not limited to the following dates:
8 March 13, 2024. Yet, DEFENDANTS failed to timely produce complete records within the time
9 periods delineated by California labor law.

10 111. For example, DEFENDANTS failed to produce including but not limited to,
11 PLAINTIFFS' time records. Based on information and belief, DEFENDANTS failed and continues
12 to fail to timely produce complete payroll and personnel records when requested by other Aggrieved
13 Employees. Based on information and belief, DEFENDANTS failed and continue to fail to timely
14 produce complete time, pay, and personnel records when requested by other Aggrieved Employees.

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

21 113. Based on information and belief, DEFENDANTS shifted the costs of doing business
22 onto Aggrieved Employees and Class Members by requiring them to pay for business expenses,
23 including but not limited to, uniforms/work clothing/work shoes/personal protective/safety gear and
24 the use of Aggrieved Employees' and Class Members' personal cell phones/mobile devices, internet
25 and/or data usage for work related purposes, including but not limited to, to receive and respond to
26 work related messages and/or phone calls. For example, based on information and belief, Aggrieved
27 Employees and Class Members were required to receive and respond to work-related calls and/or
28 messages from including but not limited to supervisors and/or other Aggrieved Employees and Class

1 Members regarding scheduling and/or other work tasks and/or were required to download and use
2 work-related applications on their personal cell phones/mobile devices but were not reimbursed by
3 DEFENDANTS at all and/or in full for these business expenses.

4 114. For example, PLAINTIFFS were at times required to respond to work-related calls
5 and/or messages on their personal cell phones/mobile devices without receiving any reimbursement
6 from DEFENDANTS for the business expenses PLAINTIFFS incurred in connection therewith,
7 including but not limited to, increased data plan charges and/or other costs associated with using
8 their personal cell phones/mobile devices for work.

9 115. Based on information and belief, DEFENDANTS failed to reimburse Aggrieved
10 Employees and Class Members for expenses associated with having to purchase and/or maintain
11 their own uniforms/work clothing/work shoes/personal protective/safety gear and/or hand tools
12 and/or other supplies, and/or equipment required to perform their assigned job duties.

13 116. For example, PLAINTIFFS had to purchase specific western-themed attire,
14 including but not limited to, hats and/or boots and/or other uniforms/work clothing/work
15 shoes/boots and/or safety/protective gear DEFENDANTS required PLAINTIFFS wear for work.
16 However, DEFENDANTS failed to provide PLAINTIFFS with any reimbursement and/or full
17 reimbursement for the business expenses PLAINTIFFS incurred in being required to purchase
18 and/or maintain DEFENDANTS' required uniforms/work clothing/work shoes/boots.

19 117. For example, PLAINTIFF NEILL was required to incur at least approximately a
20 couple hundred dollars in business expenses as a result of DEFENDANTS' requirement she
21 purchase specific western-themed attire and/or other uniforms/work clothing/work
22 shoes/boots/protective/safety gear to wear for work, however, DEFENDANTS failed to provide
23 PLAINTIFF NEILL with any and/or full reimbursement for these business expenses PLAINTIFF
24 NEILL incurred in connection with being required to purchase and/or maintain DEFENDANTS'
25 uniforms/work clothing/work shoes/boots/protective/safety gear .

26 118. Similarly, PLAINTIFF COLMENARES was also required to purchase specific
27 western-themed attire and/or other uniforms/work clothing/work shoes/boots, however,
28 DEFENDANTS failed to provide PLAINTIFF COLMENARES with any and/or full reimbursement

1 for these business expenses.

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

9 120. As explained above, based on information and belief, Aggrieved Employees and
10 Class Members were not reimbursed for the cost of using their personal phone for work related
11 purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work
12 shoes, personal protective/safety gear and/or hand tools.

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

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

22 123. **Failure to Issue Semimonthly Payments in Violation of Labor Code Section 204.**
23 In failing to pay Aggrieved Employees and Class Members wages, overtime, etc. and failing to
24 provide them with checks and wage statements, as addressed above, DEFENDANTS failed to timely
25 pay the Aggrieved Employees and Class Members wages on a semimonthly basis as required under
26 Labor Code § 204.

27 124. DEFENDANTS also required the Aggrieved Employees and Class Members to work
28 hours off-the-clock for which they were not compensated, including during on-duty meal periods.

1 DEFENDANTS also failed to pay all overtime premium wages owed for work conducted on a work
2 shift and a workday, as addressed above. Therefore, when the Aggrieved Employees and Class
3 Members received wage statements and pay checks, they did not compensate all hours worked on a
4 timely basis, resulting in DEFENDANTS' systematic failure to pay all wages owed to the Aggrieved
5 Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally,
6 by not providing wage statements as required under section 204, DEFENDANTS systematically
7 violated Labor Code §§ 204 and 226.

8 125. Given the alleged off-the-clock work, the Aggrieved Employees and Class Members
9 were not paid at the correct overtime rate for all hours they worked after eight hours into a shift or
10 over forty in a work week and that they were not paid all double time owed either. DEFENDANTS'
11 uniformly applied payroll policies and practices thus resulted in further systematic ongoing
12 violations of the requirements of Labor Code § 204.

13 126. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
14 provides as follows:

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

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

28 129. Based on information and belief, DEFENDANTS have a policy and practice of

1 failing to pay all reporting time wages to Aggrieved Employees and Class Members , in violation
2 of California law, including but not limited to, the applicable IWC Wage Order, Section
3 5. DEFENDANTS' failure to pay all reporting time wages to Aggrieved Employees violated and
4 continues to violate the applicable Wage Order, and the California Labor Code, including but not
5 limited to section 1198.

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

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

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

28 133. Upon information and belief, DEFENDANTS further failed to place PLAINTIFFS

1 and Aggrieved Employees and Class Members on notice of their paid sick leave rights – or thereby
2 putting their entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information
3 and belief, DEFENDANTS failed to provide notice of the correct sick leave amount balance
4 available to PLAINTIFFS and other Aggrieved Employees and Class Members on their wage
5 statements or other written statement. Moreover, based on information and belief, DEFENDANTS
6 failed to maintain accurate records of used sick leave and the balance of paid sick leave.

7 134. Based on information and belief, throughout the relevant time period,
8 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFFS and
9 Aggrieved Employees and Class Members, thus affecting their intelligent exercise of their paid sick
10 leave. But for this failure, PLAINTIFFS and Aggrieved Employees and Class Members would have
11 used 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.

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

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

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

27 138. All applicable IWC Wage Orders, Section 14(A-B) provides:
28

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

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

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

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

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

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

27 143. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
28 information and belief, DEFENDANTS failed to timely pay and Class Members and other

1 Aggrieved Employees and Class Members all wages that were due and owing upon termination or
2 resignation. Based on information and belief, DEFENDANTS untimely provide final wages to and
3 Class Members and other Aggrieved Employees and Class Members without regard to the timing
4 requirements of Labor Code sections 201-202. As such, DEFENDANTS are liable for waiting time
5 penalties under Labor Code section 203.

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

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

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

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

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

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

4 Unlawful Agreements.

5 149. Based on information and belief, DEFENDANTS required Aggrieved Employees to
6 agree in writing to unlawful conditions of employment including but not limited to, unlawful non-
7 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements
8 (including but not limited to, in violation of Labor Code section 232), unlawful
9 commission/compensation agreements (including but not limited to, in violation of Labor Code
10 section 2751, agreements misclassifying non-exempt employees as exempt and/or as independent
11 contractors), unlawful releases and/or waivers (including but not limited to, unlawful meal period
12 waivers universally signed as a condition of employment and/or devoid of right to revoke), unlawful
13 forum selection clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or
14 financial checks as a condition of obtaining and/or continuing employment in violation of Labor
15 Code section 432.5.

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

24 151. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
25 condition of employment, DEFENDANTS violated Labor Code section 432.5.

26 **152. Violation of Labor Code Section 432.6.** Based on information and belief,
27 DEFENDANTS require/required Aggrieved Employees to waive their right to first and/or second
28 meal periods as a condition of working for DEFENDANTS in violation of California law. As such,

1 DEFENDANTS violated including but not limited to, Labor Code section 432.6 by virtue of
2 including but not limited to, requiring Aggrieved Employees to sign invalid meal period waivers as
3 a condition of employment and/or for threatening, retaliating and/or discriminating against and/or
4 terminating Aggrieved Employees because of their refusal to waive their meal period rights.

5 153. PLAINTIFFS are informed and believe and allege thereon that DEFENDANTS
6 engaged in these same herein described unlawful practices, which led to violations of the California
7 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
8 unlawful practices to all of its employees that it applied to PLAINTIFFS.

9 Unlawful Inquires into Criminal History

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

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

19 Unlawful PAGA Waiver

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

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

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

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

11 160. PLAINTIFFS are informed and believe and allege 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 PLAINTIFFS. **Unfair Business Practices.**
15 Pursuant to Business and Professions Code §§ 17200-17208, the Class Members seek injunctive
16 relief, restitution, and disgorgement of all benefits DEFENDANTS have enjoyed from their
17 violations of the Labor Code.

18 161. **Unfair Business Practices.** Pursuant to Business and Professions Code §§ 17200-
19 17208, the Class Members seek injunctive relief, restitution, and disgorgement of all benefits
20 DEFENDANTS have enjoyed from their violations of the Labor Code.

21 **FIRST CAUSE OF ACTION**

22 **Recovery of Unpaid Minimum Wages and Liquidated Damages**

23 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

24 162. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

25 163. It is fundamental that an employer must pay its employees for all time worked.
26 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
27 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
28 permits deductions from wages when the employer is required or empowered to do so by state or

1 federal law or when the deduction is expressly authorized in writing by the employee for specified
2 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223
3 prohibits the pay of less than a statutory or contractual wage scale.

4 164. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
5 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up
6 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
7 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
8 period is unlawful.

9 165. DEFENDANTS violated California’s minimum wage laws by failing to compensate
10 PLAINTIFFS and the Class Members for all hours worked by virtue of, among other things,
11 DEFENDANTS’ time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
12 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
13 and/or payment according to scheduled hours worked rather than actual hours worked (described
14 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
15 wages.

16 166. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFFS
17 and Class Members for all hours worked.

18 167. Based on information and belief, DEFENDANTS had actual or constructive
19 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
20 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
21 periods, policy and practice of payment according to scheduled work time rather than actual work
22 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
23 owed to PLAINTIFFS and other Class Members.

24 168. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFFS and the Class
25 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
26 attorney's fees and costs, in an amount to be proved at trial.

27 **SECOND CAUSE OF ACTION**

28 **Recovery of Unpaid Overtime Wages**

1 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

2 169. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

3 170. Employees in California must be paid overtime, equal to one and one-half times the
4 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
5 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
6 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
7 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
8 consecutive day of work in a workweek, unless they are exempt.

9 171. PLAINTIFFS and the Class Members worked overtime hours for which they were
10 not compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time
11 rounding, automatic deduction for meal periods, off-the-clock/unpaid work completed during meal
12 periods, other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according
13 to scheduled hours worked rather than actual hours worked (described above), which resulted in the
14 failure to account for all hours worked and thus the denial of all owed overtime wages.

15 172. DEFENDANTS failed and continue to fail to pay the lawful premium wage rate for
16 all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

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

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

28 175. DEFENDANTS' conduct described above is in violation of California Labor Code

1 sections 510 and 1194 and all applicable Wage Orders.

2 176. PLAINTIFFS and the Class Members are entitled to recover all unpaid overtime
3 wages, plus attorney's fees and costs, in an amount to be proved.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

6 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

7 177. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

8 178. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
9 DEFENDANTS were required to provide PLAINTIFFS and the Class Members with one 30-minute
10 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
11 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
12 waived, but only under the following circumstances: (1) if an employee's total work period in a day
13 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
14 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
15 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
16 waived by mutual consent of the employer and employee, but only if the first meal period was not
17 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
18 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
19 done so.

20 179. Employers must pay employees an additional hour of wages at the employees'
21 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
22 meal period, first meal period provided after five (5) hours, second meal period provided after 10
23 hours). Lab. Code § 226.7.

24 180. As explained above, PLAINTIFFS and other Class Members were consistently
25 unable to take timely, off duty, thirty-minute, off-duty first and second meal periods due to
26 understaffing, the nature and constraints of their job duties, and/or commentary from supervisors
27 pressuring them to take non-compliant meal periods or skip meal periods completely.

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

1 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
2 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFFS and Class
3 Members did not receive compliant meal periods.

4 182. Moreover, based on information and belief, Class Members did not receive a timely,
5 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

6 183. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS had
7 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
8 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
9 violation of California's meal period laws.

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

15 185. As a result, under Labor Code section 226.7, PLAINTIFFS and the Class Members
16 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
17 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
18 all in an amount to be proved at trial.

19 **FOURTH CAUSE OF ACTION**

20 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

21 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

22 186. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

23 187. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
24 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
25 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
26 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
27 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
28 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10

1 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
2 The rest period requirement obligates employers to permit and authorize employees to take off-duty
3 rest periods, meaning employers must relieve employees of all duties and relinquish control over
4 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

5 188. If the employer fails to provide any required rest period, the employer must pay the
6 employee one hour of pay at the employee's regular rate of compensation for each workday the
7 employer did not provide at least one legally required rest period, pursuant to Labor Code section
8 226.7.

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

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

20 191. As a result, PLAINTIFFS and Class Members did not receive legally compliant first,
21 second, or third rest periods as required by California law.

22 192. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
23 period premium to PLAINTIFFS and other Class Members for each workday in which there was a
24 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
25 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
26 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
27 regular rate of compensation for purposes of determining the owed rest period premium.

28 193. DEFENDANTS are therefore liable to PLAINTIFFS and the Class Members for one

1 hour of additional pay at the regular rate of compensation for each workday that a required rest
2 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
3 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
4 trial.

5 **FIFTH CAUSE OF ACTION**

6 **Failure to Furnish Accurate Itemized Wage Statements**

7 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

8 194. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

9 195. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFFS and the
10 Class

11 Members were entitled to receive, semimonthly or at the time of each payment of wages, an
12 itemized wage statement accurately stating the following:

13 (1) gross wages earned, (2) total hours worked by the employee, except for any employee
14 whose compensation is solely based on a salary and who is exempt from payment of overtime under
15 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the
16 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
17 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
18 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
19 for which the employee is paid, (7) the name of the employee and his or her social security number,
20 except that by January 1, 2008, only the last four digits of his or her social security number or an
21 employee identification number other than a social security number may be shown on the itemized
22 statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable
23 hourly rates in effect during the pay period and the corresponding number of hours worked at each
24 hourly rate by the employee.

25 196. As DEFENDANTS failed to provide PLAINTIFFS and other Class Members with
26 meal and rest periods that complied with Labor Code section 226.7, the wage statements
27 DEFENDANTS issued to PLAINTIFFS and other Class Members failed and continue to fail to
28 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the

1 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
2 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
3 during the pay period and the corresponding number of hours worked at each hourly rate by the
4 employee, in violation of Labor Code section 226(a)(9).

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

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

23 199. Based on information and belief, wage statements issued by DEFENDANTS failed
24 to list all applicable hourly rates in effect during the pay period and the corresponding number of
25 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
26 For example, as described herein, based on information and belief, DEFENDANTS failed to
27 incorporate all forms of non-discretionary compensation earned during the pay period into the
28 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour

1 of overtime worked by Class Members.

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

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

8 202. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFFS and
9 Class Members with accurate, itemized wage statements.

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

19 204. Pursuant to California Labor Code section 226(e), PLAINTIFFS and Class Members
20 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
21 violation occurred and one hundred dollars per employee per violation for each subsequent pay
22 period, not to exceed an aggregate penalty of four thousand dollars per employee.

23 205. Pursuant to California Labor Code § 226(h), PLAINTIFFS and Class Members are
24 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
25 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
26 provide currently employed Class Members with inaccurate wage statements in violation of
27 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
28 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful

1 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
2 with California Labor Code § 226(a).

3 206. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFFS and Class
4 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
5 attorneys' fees, and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **Failure to Timely Pay Wages Upon Termination**

8 **(By PLAINTIFF GARRITSON and the Class Members Against all DEFENDANTS)**

9 207. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

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

17 209. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
18 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
19 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.

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

26 211. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
27 violations subject DEFENDANTS to waiting time penalties under Labor Code sections 203.

28 **SEVENTH CAUSE OF ACTION**

1 **Failure to Reimburse Business Expenses**

2 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

3 212. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

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

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

18 215. As described above, PLAINTIFFS and the Class Members were improperly required
19 to pay for business expenses that are legally the responsibility of the employer.

20 216. DEFENDANTS’ failure to provide PLAINTIFFS and the Class Members with full
21 reimbursement for all reasonable expenses associated with carrying out their duties required that
22 PLAINTIFFS and the Class Members subsidize and/or carry the burden of business expenses in
23 violation of Labor Code section 2802.

24 217. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFFS and the Class
25 Members have suffered injury in that they were not completely reimbursed as mandated by
26 California law.

27 218. Pursuant to California Labor Code section 2802, PLAINTIFFS and the Class
28 Members are entitled to recover the full amount of reimbursable expenses due, in addition to

1 reasonable attorneys' fees, and costs of suit.

2 **EIGHTH CAUSE OF ACTION**

3 **Unfair Competition**

4 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

5 219. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

6 220. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
7 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
8 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
9 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
10 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
11 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
12 wage statements; DEFENDANTS' failure to reimburse business expenses; and DEFENDANTS'
13 failure to provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due
14 to, including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
15 compensation into the sick pay calculation/failure to base the accrued sick leave on the correct
16 number of hours worked as a result of DEFENDANTS' off-the-clock work policies and practices).

17 221. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
18 California Labor Code, DEFENDANTS have gained a competitive advantage over other
19 comparable companies doing business in the State of California that comply with their obligations
20 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
21 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
22 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
23 minimum and overtime wages.

24 222. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFFS
25 and Class Members have suffered injury in fact and lost money or property, as described in more
26 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
27 PLAINTIFFS and Class Members are entitled to restitution of all wages and other monies rightfully
28 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their

1 unlawful and unfair business practices.

2 223. PLAINTIFFS also seek an injunction against DEFENDANTS on behalf of the Class
3 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
4 engaging in each of the unlawful practices and policies set forth herein.

5 224. PLAINTIFFS also seek an award of attorney's fees pursuant to Code Civ. Proc
6 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
7 by law.

8
9 **NINTH CAUSE OF ACTION**
10 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
11 **2698, *ET SEQ.***

12 **(On behalf of Aggrieved Employees and the State of California against all Defendants)**

13 225. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

14 **Failure to Keep Accurate Records**

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

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

24 228. DEFENDANTS' failure to keep "accurate and complete" payroll records for
25 PLAINTIFFS and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
26 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
27 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
28 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay

1 period during which the referenced statutes and Wage Order provisions were violated.¹

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

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

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

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

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

1 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
2 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

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

7 **Meal Period Violations**

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

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

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

24 236. Employers must pay employees an additional hour of wages at the employees'
25 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
26 meal period, first meal period provided after five (5) hours, second meal period provided after 10
27 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to
28 provide an employee a meal period in accordance with the applicable provision of this Order, the

1 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
2 for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

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

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

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

15 240. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS had
16 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
17 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
18 violation of California's meal period laws.

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

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

1 **Rest Period Violations**

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

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

26 245. PLAINTIFFS and the Aggrieved Employees did not receive legally compliant,
27 timely 10-minute rest periods for every four (4) hours worked or major fraction thereof. As
28 explained above, any purported rest periods were late, interrupted, cut short, on duty, and/or

1 otherwise subject to DEFENDANTS' control due to the nature and constraints of Aggrieved
2 Employees' job duties, understaffing, and/or commentary from supervisors pressuring
3 PLAINTIFFS and Aggrieved Employees to skip rest periods completely or otherwise take non-
4 compliant rest periods.

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

10 247. As a result, PLAINTIFFS and Aggrieved Employees did not receive legally
11 compliant first, second, or third rest periods as required by California law.

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

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

21 **Failure to Provide Suitable Resting Facilities**

22 250. Per section 13 of all applicable IWC Wage Orders, employees shall be provided with
23 suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities
24 shall be provided in an area separate from the toilet rooms and shall be available to employees during
25 work hours."

26 251. DEFENDANTS' locations/facilities are generally similar in layout and design, and
27 there was, and continues to be, space that allows for a resting facility that employees may use to
28 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved

1 Employees with a resting facility within DEFENDANTS' facilities/locations with reasonable or no
2 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a
3 suitable breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive
4 to resting, including but not limited to leaning up against the wall, or search for facilities outside of
5 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
6 vehicles.

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

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

12 **Minimum and Overtime Wage Violations**

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

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

26 256. As explained above, DEFENDANTS violated California's minimum and overtime
27 wage laws by failing to compensate PLAINTIFFS and the Aggrieved Employees for all hours
28 worked by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for

1 shift start and end times and meal period start and end times), payment according to scheduled hours
2 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during
3 meal periods, and/or other otherwise off-the-clock work (described above), and/or other unlawful
4 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

5 257. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFFS
6 and Aggrieved Employees for all hours worked.

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

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

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

24 261. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
25 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
26 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
27 Wage Orders, section 20.

28 **Failure to Provide Written Commission Agreements**

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

6 263. Based on information and belief, DEFENDANTS failed to provide Aggrieved
7 Employees who were compensated on a commission basis with proper written commission
8 agreements, in violation of Labor Code section 2751.

9 **Violation of Labor Code Section 226.2**

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

21 265. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
22 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
23 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
24 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
25 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
26 226.2.

27 **Statutory Wage Violations**

28 266. California Labor Code section 223 makes it unlawful for an employer to secretly pay

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

10 **Refusal to Make Payment**

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

19 **Standard Conditions of Labor Violations**

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

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

1 violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor
2 Code sections 1197.1 and 2699.

3 **Business Expense Violations**

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

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

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

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

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

28 274. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFFS and other Aggrieved

1 Employees have suffered injury in that they were not completely reimbursed as mandated by
2 California law.

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

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

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

14 **Wage Statement Violations**

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

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

1 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
2 effect during the pay period and the corresponding number of hours worked at each hourly rate by
3 the employee, in violation of Labor Code section 226(a)(9).

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

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

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

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

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

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

11 286. For example, based on information and belief, at times, DEFENDANTS issued wage
12 statement(s) to Aggrieved Employees that list a category for "Retro" pay without including the
13 inclusive dates of the accurate pay period for that "Retro" pay, further failing to list the total hours
14 worked for the pay period, including but not limited to, the total hours worked for the pay period
15 the retroactive pay corresponds with, in violation of including but not limited to, Labor Code section
16 226(a)(2) and/or Labor Code section 226(a)(6).

17 287. DEFENDANTS' failure to accurately list all hours worked on all wage statements
18 caused confusion to PLAINTIFFS and caused and continues to cause confusion to other Aggrieved
19 Employees over whether they received all wages owed to them.

20 288. As a result, PLAINTIFFS and other Aggrieved Employees have suffered injury as
21 they could not easily determine whether they received all wages owed to them and whether they
22 were paid for all hours worked.

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

27 290. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFFS and
28 Aggrieved Employees with accurate, itemized wage statements.

1 291. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFFS and Aggrieved
2 Employees have suffered injury. The absence of accurate information on their wage statements has
3 prevented earlier challenges to DEFENDANTS’ unlawful pay practices, will require discovery and
4 mathematical computations to determine the amount of wages owed, and will cause difficulty and
5 expense in attempting to reconstruct time and pay records. DEFENDANTS’ conduct led to the
6 submission of inaccurate information about wages and amounts deducted from wages to state and
7 federal government agencies. As a result, PLAINTIFFS and Aggrieved Employees are required to
8 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
9 and pay records than if DEFENDANT had complied with its legal obligations.

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

13 **Unlawful Deductions**

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

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

26 **Failure to Issue Semimonthly Payments in Violation of Labor Code Section 204.**

27 295. In failing to pay Aggrieved Employees wages, overtime, etc. and failing to provide

28 ³ Labor Code § 226.3 (establishing that the civil penalty is “per employee per violation”).

1 them with checks and wage statements, DEFENDANTS failed to timely pay the Aggrieved
2 Employees wages on a semimonthly basis as required under Labor Code § 204.

3 296. DEFENDANTS also required the Aggrieved Employees to work hours off-the-clock
4 for which they were not compensated, including during on-duty meal periods. DEFENDANTS also
5 failed to pay all overtime premium wages owed for work conducted on a work shift and a workday,
6 as addressed above. Therefore, when the Aggrieved Employees received wage statements and pay
7 checks, they did not compensate all hours worked on a timely basis, resulting in DEFENDANTS'
8 systematic failure to pay all wages owed to the Aggrieved Employees twice monthly in accordance
9 with the requirements of Labor Code § 204. Additionally, by not providing wage statements as
10 required under section 204, DEFENDANTS systematically violated Labor Code §§ 204 and 226.

11 297. Given the alleged off-the-clock work, the Aggrieved Employees were not paid at the
12 correct overtime rate for all hours they worked after eight hours into a shift or over forty in a work
13 week and that they were not paid all double time owed either. DEFENDANTS' uniformly applied
14 payroll policies and practices thus resulted in further systematic ongoing violations of the
15 requirements of Labor Code § 204.

16 **Reporting Time Pay Violations.**

17 298. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

26 300. Aggrieved Employees were not paid reporting time wages in accordance with
27 California law, including but not limited to the applicable IWC Wage Order. For example, based on
28 information and belief, at times, Aggrieved Employees reported to work for a scheduled shift but

1 were sent home and/or were not put to work and were not paid all owed reporting time pay wages
2 in accordance with California law.

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

8 **Violation of California Day of Rest Law.**

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

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

19 **Seating Violations**

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

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

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

26 (B) When employees are not engaged in the active duties of their employment and the
27 nature of the work requires standing, an adequate number of suitable seats shall be placed in
28

1 reasonable proximity to the work area and employees shall be permitted to use such seats when it
2 does not interfere with the performance of their duties.

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

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

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

15 309. The Aggrieved Employees worked in various positions in including but not limited
16 to, DEFENDANTS' retail stores, warehouse distribution centers and/or warehouses. The nature of
17 Aggrieved Employees' work reasonably permitted the use of seats. However, DEFENDANTS
18 failed to provide suitable seating in reasonable proximity to Aggrieved Employees' work areas in
19 violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199,
20 subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each
21 violation of each Labor Code section and IWC Wage Order provision, for each Aggrieved
22 Employee, results in a separate civil penalty.

23 **Sick Leave Violations**

24 310. DEFENDANTS violated California's paid sick leave laws including, Labor Code
25 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
26 PLAINTIFFS and other Aggrieved Employees or failed to properly accrue paid sick leave due to
27 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
28 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but

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

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

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

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

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

21 315. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

22 316. On information and belief, PLAINTIFFS allege that all of these practices were
23 experienced and continue to be experienced by other Aggrieved Employees.

24 317. Accordingly, PLAINTIFFS, on behalf of Aggrieved Employees, seek all appropriate
25 relief under the PAGA, the aforementioned code provisions including but not limited to Labor Code
26 section 233 and 234, and seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as
27 permitted by law.

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

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

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

12 **Untimely Payment of Final Wages**

13 320. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
14 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
15 payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an
16 employee not having a written contract for a definite period quits his or her employment, his or her
17 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
18 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
19 to his or her wages at the time of quitting."

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

26 322. Based in information and belief, DEFENDANTS failed and continue to fail to timely
27 pay final wages to PLAINTIFFS and Aggrieved Employees upon separation of employment in
28 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFFS

1 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not
2 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
3 sick leave and/or paid time off wages at the properly accrued rates.

4 323. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
5 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
6 256.

7 **Violation of Labor Code Section 208**

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

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

17 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

18 326. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
19 require any employee or applicant for employment to agree, in writing, to any term or condition
20 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
21 continue to require PLAINTIFFS and Aggrieved Employees to agree in writing to unlawful
22 conditions of employment, including but not limited to, unlawful non-solicitation/non-compete
23 agreements, unlawful confidentiality and/or nondisclosure agreements (including but not limited to,
24 in violation of Labor Code section 232), unlawful commission/compensation agreements (including
25 but not limited to, in violation of Labor Code section 2751, agreements misclassifying non-exempt
26 employees as exempt and/or as independent contractors), unlawful releases and/or waivers
27 (including but not limited to, unlawful meal period waivers universally signed as a condition of
28 employment and/or devoid of right to revoke), unlawful forum selection clauses and/or choice of

1 law provisions/agreements and/or unlawful criminal and/or financial checks as a condition of
2 obtaining and/or continuing employment in violation of Labor Code section 432.5.

3 327. Labor Code section 432.6(a), provides that “a person shall not, as a condition of
4 employment, continued employment, or the receipt of any employment-related benefit, require any
5 applicant for employment or any employee to waive any right...”Based on information and belief,
6 DEFENDANTS required Aggrieved Employees to sign meal period waivers that were universally
7 signed as a condition of employment, including but not limited to, during the onboarding process.
8 By requiring Aggrieved Employees to sign unlawful meal period waivers as a condition of obtaining
9 and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these
10 invalid waivers are otherwise unlawful under Labor Code section 432.6.

11 Unlawful Inquires into Criminal History

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

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

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

26 Unlawful PAGA Waiver

27 331. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring
28 Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited

1 to, an unlawful waiver of PAGA and/or representative actions as a condition of employment.

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

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

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

18 335. Under the provisions of PAGA and the above mentioned Labor Code sections,
19 including but not limited to Labor Code sections 201-204, 208, 210, 216, 218.5, 221-223, 225.5,
20 226, 226.2, 226.3, 226.7, 227.3, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1,
21 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2751, 2802,
22 2810.5 and all applicable Wage Orders as well as all interpretations of these laws by California
23 Courts and administrative bodies, as well as any other law that is enforceable through PAGA,
24 DEFENDANTS are liable for the following penalties:

- 25 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
26 relevant California Labor Code provisions listed herein only if permitted by the
27 PAGA statute, pursuant to Labor Code section 2699(a); and
28 b. Default PAGA penalties for any violation of the enumerated list of Labor Code

1 violations without a civil penalty recoverable under the PAGA, all in the default
2 amounts provided by Labor Code section 2699(f).

3 c. The proper measure of penalties under PAGA is the number of violations
4 committed as against any Aggrieved Employee.

5 336. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
6 PLAINTIFFS are entitled to recover on behalf of Aggrieved Employees, civil penalties, costs, and
7 attorney's fees.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFFS prays for relief and judgment, on behalf of PLAINTIFF, the State of
11 California, Aggrieved Employees and Class Members as follows:

- 12 1. For an order that the action be certified as a class action;
 - 13 2. For an order that PLAINTIFF be appointed as class representative;
 - 14 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
 - 15 4. For compensatory damages according to proof;
 - 16 5. For liquidated damages according to proof;
 - 17 6. For penalties according to proof;
 - 18 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
19 withheld from PLAINTIFF and the Class Members;
 - 20 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
21 section 17200, *et seq.*, of the California Business and Professions Code;
 - 22 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
 - 23 10. For pre-judgment interest as permitted by law;
 - 24 11. For civil penalties under Labor Code Section 2699;
 - 25 12. For attorney's fees and costs reasonably incurred; and
 - 26 13. For such other and further relief that the Court deems just and proper.
- 27
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1 Dated: October 28, 2025

CROSNER LEGAL, PC

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By: 

Jamie K. Serb, Esq.
Sepideh Ardestani, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

PLAINTIFF demands a trial by jury on all claims so triable.

8 Dated: October 28, 2025

CROSNER LEGAL, PC

By: 

Jamie K. Serb, Esq.
Sepideh Ardestani, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiffs

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On October 28, 2025, I served true copies of the following document(s) described as

PLAINTIFFS' FIRST AMENDED CLASS AND REPRESENTATIVE COMPLAINT

on the interested parties in this action as follows:

☒ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced document(s) from the email address agutierrez@crosnerlegal.com to the interested parties in this action by electronic transmission. Said electronic transmission was reported as complete and without error. Court at whose direction the service was made.

Executed on October 28, 2025, at Los Angeles, California.

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PROOF OF SERVICE

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SERVICE LIST
ARION NIELL and DAVE COLMENARES V. BOOT BARN, INC. ET AL.
Riverside Case No. CVRI2402537

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