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on behalf of the State of California and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

JILL CHURCHWELL, on behalf of the
State of California and all Aggrieved
Employees,

Plaintiff,

v.

WALMART INC., a Delaware
Corporation; DELIVERY DRIVERS,
INC., a California Corporation; and DOES
1-100, inclusive,

Defendants.

Case No.: **CVRI 2402497**

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

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

6 **INTRODUCTION**

7 This is a representative action filed by PLAINTIFF on behalf of all Aggrieved Employees
8 and the State of California against DEFENDANTS, pursuant to California’s Private Attorney
9 General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties (75% payable
10 to the Labor and Workforce Development Agency and 25% payable to Aggrieved Employees) for
11 DEFENDANTS’ violations of the California Labor Code as alleged below. DEFENDANTS
12 willfully misclassified delivery drivers as independent contractors despite failing to meet the
13 requirements as mandated in Proposition 22. DEFENDANTS further failed to meet the requirements
14 of Labor Code 2775. As such, at all relevant times, Aggrieved Employees were non-exempt
15 employees of DEFENDANTS under California law.

16 **JURISDICTION AND VENUE**

17 1. This court possesses original subject matter jurisdiction over this matter. Venue is
18 proper in the County of Riverside pursuant to California Code of Civil Procedure section 395.5
19 because DEFENDANTS transact business within this judicial district, and some of the acts,
20 omissions, and conduct alleged by PLAINTIFF herein occurred in this this judicial district, and
21 some of the Aggrieved Employees worked for DEFENDANTS in the County of Riverside. *See also*
22 *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a
23 PAGA action is proper in any county where the defendants committed Labor Code violations against
24 some of its employees). Venue is also proper pursuant to section 393 of the California Code of Civil
25 Procedure because the cause, or some part of the cause, arose in the County of Riverside.

26 **THE PARTIES**

27 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
28 California and a citizen of the State of California. DEFENDANTS willfully misclassified

1 PLAINTIFF as an independent contractor. However, at all relevant times, PLAINTIFF was in fact
2 a non-exempt employee of DEFENDANTS, and was misclassified as an independent contractor.

3 3. PLAINTIFF worked for DEFENDANTS as a delivery driver and/or similar title(s)
4 at various locations and/or with routes completed in various cities throughout California as assigned
5 by DEFENDANTS, since in or around November 2022, and continuing through the present.
6 PLAINTIFF and the Aggrieved Employees work/worked for DEFENDANTS as delivery drivers
7 and/or similar title(s). PLAINTIFF was typically assigned to work and make deliveries out of
8 assigned locations, including but not limited to, location(s) in Bakersfield, California and other cities
9 in California as assigned by DEFENDANTS.

10 4. Defendant WALMART INC. is a Delaware Corporation that at all relevant times
11 was authorized to do business in California and is doing business in California.

12 5. Defendant DELIVERY DRIVERS, INC. is a California Corporation that at all
13 relevant times was authorized to do business in California and is doing business in California.

14 6. DEFENDANTS own, operate manage and/or staff its employees to work at facilities
15 and/or locations in counties throughout California, including but not limited to, in the city of
16 Bakersfield and other cities throughout California. DEFENDANTS operate under the name(s)
17 “Spark”; “Spark Driver(s)”; and/or “Walmart.” DEFENDANTS, through its various locations, serve
18 the consumer products and services industry.

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

25 8. PLAINTIFF is further informed and believes that, at all relevant times, each
26 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
27 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
28 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of

1 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
2 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
3 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
4 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
5 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
6 controlled, aided and abetted the conduct of all other Defendants.

7 **JOINT LIABILITY**

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

25 10. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the
26 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of
27 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
28 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control

1 over wages, hours and working conditions of PLAINTIFF and the Aggrieved Employees; (2)
2 suffered or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged
3 PLAINTIFF and Aggrieved Employees to work for them.

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

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

24 13. For example, based on information and belief, DEFENDANTS issued pay statements
25 to PLAINTIFF that identify "Delivery Drivers, Inc." as the name of the legal entity that is
26 PLAINTIFF's employer. However, based on information and belief, documents contained in
27 DEFENDANTS' records for PLAINTIFF, including but not limited to, background check
28 documents and/or other documents, policies, and/or agreements identify Walmart and/or Spark's as

1 the name of PLAINTIFF's employer. Based on information and belief, DEFENDANTS required
2 PLAINTIFF and other Aggrieved Employees to present themselves as workers for "Spark"; "Spark
3 Driver(s)"; and/or "Walmart". Also, based on information and belief, PLAINTIFF and other
4 Aggrieved Employees were required to download and use DEFENDANTS' "Spark" and/or "Spark
5 Driver" app for including but not limited to, receiving work assignments, sending and receiving
6 work-related communications, for navigation purposes, and/or for other work-related purposes.
7 Moreover, as explained above, DEFENDANTS required Aggrieved Employees to affix
8 DEFENDANTS' company name on their trucks/vehicles as well as use equipment supplied by
9 DEFENDANTS identifying "Spark"; "Spark Driver(s)" and/or "Walmart" company name, and
10 Aggrieved Employees were required to represent themselves as "Spark"; "Spark Driver(s)"; and/or
11 "Walmart" drivers when arriving at assigned delivery locations and/or checking in at various
12 assignments.

13 14. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
14 uniform set of policies, practices and/or procedures concerning, inter alia, pay rates, time-keeping
15 practices, reimbursement of business expenses and/or other working conditions that were distributed
16 to, and/or applied to PLAINTIFF and the Aggrieved Employees, and further that DEFENDANTS
17 uniformly compensated and controlled the wages of PLAINTIFF and the Aggrieved Employees in
18 a uniform manner. Upon information and belief, DEFENDANTS further collectively represented to
19 PLAINTIFF and Aggrieved Employees in writing the details of their compensation and the policies
20 applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS collectively would
21 evaluate the pay rates of PLAINTIFF and other Aggrieved Employees.

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

27 16. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
28 control over, applied the same policies and practices, and engaged in the same acts and omissions

1 with regard to the other Aggrieved Employees.

2 **PAGA ALLEGATIONS**

3 17. PLAINTIFF brings this action under the PAGA, as a representative action solely on
4 behalf of the State of California and all Aggrieved Employees, regarding violations of the California
5 Labor Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

6 All individuals who worked for any one or more of the
7 DEFENDANTS at any location in California within one year plus 65
8 days from the filing of the initial Complaint through the present
9 (“PAGA Period”).

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

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

22 19. On February 6, 2024, PLAINTIFF, through counsel, gave written notice by online
23 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
24 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
25 in this Complaint (“PAGA Notice”). PLAINTIFF’s PAGA Notice was also sent to DEFENDANTS
26 via certified mail.

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

1 Employees.

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

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

11 **FACTUAL AND LEGAL ALLEGATIONS**

12 23. During the PAGA Period, PLAINTIFF, and each of the Aggrieved Employees, were
13 employed by DEFENDANTS in the State of California. At all relevant times, PLAINTIFF and the
14 Aggrieved Employees were employees of DEFENDANTS that DEFENDANTS willfully
15 misclassified as independent contractors to evade California wage and hour laws. At all times
16 referenced herein, DEFENDANTS exercised control over PLAINTIFF and each of the Aggrieved
17 Employees and suffered and/or permitted them to work.

18 24. PLAINTIFF worked for DEFENDANTS as a delivery driver and/or similar title(s)
19 at various locations and/or with routes completed in various cities throughout California as assigned
20 by DEFENDANTS, from in or around November 2022, and continuing through the present.
21 PLAINTIFF and other Aggrieved Employees work/worked for DEFENDANTS as delivery drivers
22 and/or similar title(s).

23 25. PLAINTIFF was typically assigned to work and make deliveries out of assigned
24 locations, including but not limited to, location(s) in Bakersfield, California, and other cities in
25 California as assigned by DEFENDANTS.

26 26. PLAINTIFF regularly worked shifts lasting at least five and one-half (5 ½) hours and
27 regularly worked at least thirty (30) to forty (40) hours per week. At times, PLAINTIFF was
28 compensated on a strictly piece-rate basis (e.g., per mile and/or per delivery completed).

1 27. At times, PLAINTIFF was paid an hourly rate for time counted by DEFENDANTS
2 as hours worked.

3 28. At all relevant times, PLAINTIFF and the Aggrieved Employees were non-exempt
4 employees of DEFENDANTS that DEFENDANTS willfully misclassified as independent
5 contractors to evade California wage and hour laws.

6 29. DEFENDANTS willfully misclassified and continues to willfully misclassify
7 PLAINTIFF and the Aggrieved Employees as independent contractors in an attempt to evade
8 California labor laws that protect employees, including but not limited to, minimum and overtime
9 wage and sick pay laws, meal and rest period laws, expense reimbursement requirements, wage
10 statement requirements, and requirements as to the timely payment of wages during and upon
11 separation of employment. Because DEFENDANTS improperly classified PLAINTIFF as an
12 independent contractor rather than as a non-exempt employee, PLAINTIFF was not properly and
13 fully compensated for all hours worked. DEFENDANTS' failure to compensate PLAINTIFF for all
14 hours worked resulted in violations of California minimum and overtime wage laws. DEFENDANTS
15 also did not provide PLAINTIFF duty-free, uninterrupted, thirty-minute meal
16 periods when PLAINTIFF worked more than five and one half (5 1/2) hours in a workday. Despite
17 failing to provide PLAINTIFF with meal breaks, DEFENDANTS did not pay the required meal
18 period premiums in violation of California law. Similarly, DEFENDANTS did not provide
19 PLAINTIFF with required rest breaks, or with compensation in lieu thereof, as required by
20 California law. Also, PLAINTIFF was required to use PLAINTIFF's own vehicle to make pickups
21 and/or deliveries on behalf of DEFENDANTS, but DEFENDANTS failed to reimburse PLAINTIFF
22 for use of PLAINTIFF's personal vehicle and other reasonably necessary business expenses,
23 including but not limited to, use of PLAINTIFF's personal cell phone/mobile device and vehicle
24 and/or other work-related supplies. Additionally, DEFENDANTS failed to provide accurate,
25 itemized wage statements and/or any wage statements at all to PLAINTIFF and failed to pay
26 Aggrieved Employees all wages due during and upon separation of employment within the time
27 limits prescribed by California law.

28 30. **Proposition 22:** In November 2022, the State of California passed Prop 22 which
9
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 allows companies to classify app-based delivery drivers as independent contractors but only if
2 certain criteria are met. The criteria that must be met for app-based drivers to be classified as
3 independent contractors includes but is not limited to a guaranteed minimum level of earnings. Even
4 in light of Proposition 22, Aggrieved Employees do not qualify as independent contractors as
5 DEFENDANTS failed to comply with all the requirements mandated under Prop 22 in order to be
6 able to classify a worker as an independent contractor.

7 a. For example, the “guaranteed earnings” requirements mandated by Prop 22 are
8 as follows:

9 b. Engaged Time Payment: To be classified as an independent contractor under
10 Prop 22, workers must be paid an amount per minute of engaged time, which
11 includes the time they spend from accepting a trip request to completing the
12 delivery.

13 c. Mileage Payment: To be classified as an independent contractor under Prop 22
14 workers must receive a payment per mile driven while on a trip. This payment
15 accounts for the distance they cover during the delivery.

16 d. Minimum Earnings: To be classified as an independent contractor under Prop
17 22, a minimum earnings threshold must be met. If a driver’s earnings, including,
18 engaged time and mileage pay fall below this minimum threshold, the driver
19 does not meet the requirements to be classified as an independent contractor
20 under Prop 22.

21 e. Additional Benefits: In order to be classified as an independent contractor under
22 Prop 22, workers working more than fifteen (15) hours per week must receive
23 healthcare subsidiaries and must be provided with occupational accident
24 insurance coverage.

25 31. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
26 Employees for including but not limited to all time spent from accepting a trip request to completing
27 the delivery.

28 32. Based on further information and belief, DEFENDANTS failed to compensate

1 Aggrieved Employees per mile driven and/or for all miles driven while on any and all trips.

2 33. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
3 Employees at the minimum earnings threshold set forth in Prop 22.

4 34. Based on information and belief, DEFENDANTS failed to provide Aggrieved
5 Employees that worked more than fifteen (15) hours in a week with healthcare subsidies and further
6 failed to provide Aggrieved Employees with occupational accident insurance coverage.

7 35. As such, Aggrieved Employees do not meet the requirements to be classified as
8 independent contractors under Prop 22, and furthermore, do not meet the requirements to be
9 classified as independent contractors under current California law, including but not limited to,
10 *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903 as codified in Labor Code
11 Section 2775.

12 36. As part of its misclassification scheme, DEFENDANTS have failed and continue to
13 fail to pay other Aggrieved Employees all owed minimum wages and overtime wages during and
14 upon separation of employment, failed and continue to fail to provide Aggrieved Employees with
15 meal and rest periods in accordance with California law, failed and continue to fail to reimburse
16 Aggrieved Employees for business expenses, and failed and continue to fail to furnish accurate
17 itemized wage statements and/or any wage statements at all to Aggrieved Employees, among other
18 violations of California law.

19 37. To qualify as an independent contractor under California law as codified in Labor
20 Code Section 2775, (a) the worker must be free from the employer's control and direction in the
21 performance of the work, both under the contract for the performance of the work and in fact; (b)
22 the work performed must be outside the usual course of the employer's business; and (c) the worker
23 must not be customarily engaged in an independently established trade, occupation, or business of
24 the same nature as the work he performed for employer. *Dynamex Operations West, Inc. v. Superior*
25 *Court* (2018) 4 Cal.5th 903; Labor Code Section 2775. All three conditions must be met, or the
26 worker has been misclassified. The worker is presumed to be an employee unless the
27 employer/hiring entity can show that all three conditions are met.

28 38. Despite DEFENDANTS' efforts to evade California wage and hour laws by setting

1 up an alleged contractor scheme, the reality is that PLAINTIFF and the Aggrieved Employees are
2 and were, in fact, at all relevant times, employees according to the law, in that: (a) PLAINTIFF and
3 the Aggrieved Employees are/were not free from DEFENDANTS' control and direction in the
4 performance of work, both under the contract for the performance of the work and in fact; (b) the
5 work PLAINTIFF and the Aggrieved Employees perform/performed work is/was entirely within
6 the usual course of DEFENDANTS' business; and (c) PLAINTIFF and the Aggrieved Employees
7 are not/were not customarily engaged in an independently established trade, occupation, or business
8 of the same nature as the work they perform/performed for DEFENDANTS.

9 a. PLAINTIFF and Aggrieved Employees are/were not free from DEFENDANTS'
10 control and direction in the performance of work, both under the contract for the performance of the
11 work and in fact. DEFENDANTS control and direct PLAINTIFF's and other Aggrieved
12 Employees' work. First, DEFENDANTS scheduled pickup and delivery of PLAINTIFF's loads.
13 DEFENDANTS instructed PLAINTIFF on how to deliver loads. DEFENDANTS controlled the
14 assignments PLAINTIFF would receive, the amount PLAINTIFF was paid, and the locations
15 PLAINTIFF worked. For example, based on information and belief, DEFENDANTS determined
16 the rate per load, which was negotiated by DEFENDANTS and unchangeable by PLAINTIFF.
17 Based on information and belief, DEFENDANTS required PLAINTIFF and/or other Aggrieved
18 Employees to affix DEFENDANTS' company name on their vehicles, and/or required PLAINTIFF
19 to represent himself as Spark when arriving at her assigned delivery/pickup locations. Based on
20 information and belief, DEFENDANTS supplied PLAINTIFF with a place to park her vehicle
21 and/or the trailers and/or other equipment with which to perform her assigned job duties. Based on
22 information and belief, if PLAINTIFF was late for her scheduled pickups or deliveries PLAINTIFF
23 would be subject to disciplinary action by DEFENDANTS, including but not limited to, a reduction
24 in the number of routes assigned and/or assignment of less desirable routes. DEFENDANTS hired
25 PLAINTIFF without any set end date for her services. PLAINTIFF's term of employment with
26 DEFENDANTS was indefinite, and PLAINTIFF could have been terminated by DEFENDANTS at
27 will (which happened) or quit at any time. DEFENDANTS required that PLAINTIFF report to a
28 Walmart/Sparks Supervisor, who kept tabs on PLAINTIFF and directed PLAINTIFF's work on an

1 ongoing, day-to-day basis. Based on information and belief, PLAINTIFF and other Aggrieved
2 Employees were required to report to DEFENDANTS on a daily basis and provide updates on the
3 number of loads completed for the day. As a result, DEFENDANTS controlled and directed
4 PLAINTIFF's and continue to control and direct other Aggrieved Employees' work.

5 b. The work PLAINTIFF and the Aggrieved Employees perform/performed work
6 is/was entirely within the usual course of the DEFENDANTS' business of providing
7 trucking/transportation services. DEFENDANTS are in the business of providing
8 trucking/transportation services, and PLAINTIFF and Aggrieved Employees work/worked in
9 various positions including but not limited to truck drivers in order to conduct DEFENDANTS'
10 business. The work that PLAINTIFF and the Aggrieved Employees perform/performed is/was
11 therefore not a distinct occupation or an incidental or tangential part of DEFENDANTS' operations,
12 but rather is/was central to DEFENDANTS' business.

13 c. PLAINTIFF and the Aggrieved Employees are not/were not customarily engaged in
14 an independently established trade, occupation, or business of the same nature as the work they
15 perform/performed for DEFENDANTS. Instead, DEFENDANTS required PLAINTIFF and other
16 Aggrieved Employees to present themselves as workers for "Spark" and/or as "Spark Driver(s)"
17 and/or "Walmart" and/or DEFENDANTS. PLAINTIFF and the Aggrieved Employees do not/did
18 not incur profits or losses; instead, DEFENDANTS manage/managed the business operation,
19 attract/attracted any investors and customers, advertise/advertised to potential customers/clients and
20 secure/secured customers/clients. PLAINTIFF and the Aggrieved Employees do not/have not made
21 any capital investment in any of DEFENDANTS' facilities or advertising or DEFENDANTS'
22 electronic systems. Moreover, as explained above, DEFENDANTS required Aggrieved Employees
23 to affix DEFENDANTS' company name on their trucks/vehicles as well as use equipment supplied
24 by DEFENDANTS identifying "Spark" and/or as "Spark Driver(s)" and/or "Walmart"/
25 DEFENDANTS' company name, and Aggrieved Employees were required to represent themselves
26 as "Spark" and/or as "Spark Driver(s)" and/or "Walmart" when arriving at PLAINTIFF's assigned
27 locations and/or checking in at her various assignments. Nevertheless, DEFENDANTS unilaterally
28 label PLAINTIFF and other Aggrieved Employees as independent contractors and requires them to

1 enter into contracts labeling them as such, when they in fact, are not independent contractors.

2 39. Based on the work relationship described above, PLAINTIFF and the Aggrieved
3 Employees were at all relevant times DEFENDANTS' non-exempt employees – not independent
4 contractors. Thus, DEFENDANTS' conduct constitutes an intentional, willful pattern and/or
5 practice of misclassification, in violation of including but not limited to, Labor Code Section 226.8
6 and/or Labor Code Section 2775.

7 40. DEFENDANTS willfully misclassified and continue to willfully misclassify
8 PLAINTIFF and the Aggrieved Employees as independent contractors in an attempt to evade
9 California labor laws that protect employees, including but not limited to, minimum and straight
10 time wage and sick pay laws, expense reimbursement requirements, and wage statement
11 requirements. Because DEFENDANTS improperly classified PLAINTIFF as an independent
12 contractor rather than as a non-exempt employee, PLAINTIFF was not properly and fully
13 compensated for all hours worked, as PLAINTIFF was not paid all owed minimum and straight time
14 wages for all hours worked. Also, based on information and belief, Aggrieved Employees were
15 required to use their personal cell phones, pay for data plan usage and/or internet and/or use their
16 personal vehicles for work purposes, pay for fuel costs and vehicle and/or equipment maintenance,
17 purchase, maintain, and/or repair tools and/or equipment and were charged fees for dispatch services
18 and/or other administrative services and/or for the use of tools and/or equipment required to perform
19 the job duties DEFENDANTS assigned to Aggrieved Employees. DEFENDANTS did not
20 reimburse Aggrieved Employees for these expenses. Based on information and belief Aggrieved
21 Employees were required to incur business related expenses that they were not reimbursed for,
22 including but not limited to, costs associated with being required to use their personal vehicles,
23 personal cell phones, and purchase and/or maintain their own hand tools/equipment and/or uniforms
24 and/or protective/safety equipment. Additionally, DEFENDANTS failed to provide accurate,
25 itemized wage statements (and/or any wage statements at all) to PLAINTIFF and other Aggrieved
26 Employees.

27 41. As part of its misclassification scheme, DEFENDANTS have failed and continue to
28 fail to pay Aggrieved Employees all owed minimum wages and straight time wages and continue to

1 fail to reimburse Aggrieved Employees for business expenses and failed and continue to fail to
2 furnish accurate itemized wage statements to Aggrieved Employees.

3 42. **Willful Misclassification as an Independent Contractor.** California Labor Code
4 section 226.8 makes it illegal to willfully misclassify an employee as an independent contractor,
5 providing: “[i]t is unlawful for any person or employer to engage in any of the following activities:
6 (1) Willful misclassification of an individual as an independent contractor. (2) Charging an
7 individual who has been willfully misclassified as an independent contractor a fee, or making any
8 deductions from compensation, for any purpose, including for goods, materials, space rental,
9 services, government licenses, repairs, equipment maintenance, or fines arising from the
10 individual’s employment where any of the acts described in this paragraph would have violated the
11 law if the individual had not been misclassified.” California Labor Code section 226.8 (a).

12 43. On various diverse dates throughout the relevant period, DEFENDANTS
13 misclassified PLAINTIFF and other Aggrieved Employees as independent contractors as opposed
14 to employees to evade California wage and hour laws. To qualify as an independent contractor
15 under California law, (1) the worker must be free from the employer’s control and direction in the
16 performance of the work, both under the contract for the performance of the work and in fact; (2)
17 the work performed must be outside the usual course of the employer’s business; and (3) the worker
18 must not be customarily engaged in an independently established trade, occupation, or business of
19 the same nature as the work he performed for employer. *Dynamex Operations West, Inc. v. Superior*
20 *Court* (2018) 4 Cal.5th 903; Labor Code Section 2775. All three conditions must be met, or the
21 worker has been misclassified.

22 44. Despite DEFENDANTS’ efforts to evade California wage and hour laws by setting
23 up an alleged contractor scheme, the reality is that PLAINTIFF and the Aggrieved Employees are
24 and were, in fact, at all relevant times, employees according to the law, in that: (a) PLAINTIFF and
25 the Aggrieved Employees are/were not free from DEFENDANTS’ control and direction in the
26 performance of work, both under the contract for the performance of the work and in fact; (b) the
27 work PLAINTIFF and the Aggrieved Employees perform/performed work is/was entirely within
28 the usual course of DEFENDANTS’ business; and (c) PLAINTIFF and the Aggrieved Employees

1 are not/were not customarily engaged in an independently established trade, occupation, or business
2 of the same nature as the work they perform/performed for DEFENDANTS.

3 45. PLAINTIFF and Aggrieved Employees are/were not free from DEFENDANTS'
4 control and direction in the performance of work, both under the contract for the performance of the
5 work and in fact. DEFENDANTS control and direct PLAINTIFF's and other Aggrieved
6 Employees' work.

7 46. For example, based on information and belief, DEFENDANTS required PLAINTIFF
8 and the Aggrieved Employees to undergo an extensive application and background check process
9 in order to be able to provide delivery services to DEFENDANTS' customers. PLAINTIFF and the
10 Aggrieved Employees were prohibited from offering any services through DEFENDANTS' app
11 unless they had been selected through DEFENDANTS' application process and undergone and
12 passed an extensive background check.

13 47. Also, PLAINTIFF is informed and believes, and based thereon alleges, that during
14 the Covid-19 pandemic, DEFENDANTS exercised further control over its workers by requiring that
15 they wear personal protective equipment and or follow detailed instructions set by DEFENDANTS
16 on how to conduct themselves before, during and after a job. Furthermore, based on information
17 and belief, DEFENDANTS reserve the right to terminate Aggrieved Employees' accounts for any
18 reason.

19 48. Based on information and belief, DEFENDANTS schedule/scheduled PLAINTIFF's
20 and other Aggrieved Employees' delivery service jobs. PLAINTIFF and other Aggrieved
21 Employees cannot change or determine the prices/charges for delivery/pickup services performed;
22 rather, any prices/charges for delivery/pickup services performed by Aggrieved Employees are/were
23 negotiated by and/or determined by DEFENDANTS. DEFENDANTS instruct/instructed
24 PLAINTIFF and other Aggrieved Employees regarding how to perform the delivery service services
25 they are/were assigned to perform and required/require PLAINTIFF and other Aggrieved
26 Employees to abide by DEFENDANTS' rules with respect to how to conduct themselves during the
27 provision of the delivery/pickup services as assigned by DEFENDANTS.

28 49. For example, based on information and belief, DEFENDANTS provide/provided

1 detailed instructions of all jobs/assignments/work to be performed, and all of the details of the
2 jobs/assignments/work to be performed and any communications with DEFENDANTS and/or
3 DEFENDANTS' customers/ clients are/were required to be conducted using DEFENDANTS'
4 mobile application/electronic platform and/or by accessing DEFENDANTS' workers' portal.

5 50. For example, based on information and belief, PLAINTIFF and other Aggrieved
6 Employees are/were not allowed to provide DEFENDANTS' customers/clients with their direct
7 phone numbers as all communications have/had to be done through DEFENDANTS' app.
8 DEFENDANTS further exercised control over all communications between Aggrieved Employees
9 and its' clients/customers and prohibited the exercise of any independent discretion by Aggrieved
10 Employees in the performance of their assigned job duties by prohibiting PLAINTIFF and other
11 Aggrieved Employees from blocking any/certain clients/customers on DEFENDANTS' app. Based
12 on further information and belief, DEFENDANTS require/required PLAINTIFF and other
13 Aggrieved Employees to represent themselves as "Spark" and/or as "Spark Driver(s)" and/or
14 "Walmart" and/or DEFENDANTS when arriving at customers'/clients' homes and/or other job
15 sites. Based on information and belief, if PLAINTIFF and/or other Aggrieved Employees decline a
16 job, they are subjected to disciplinary action by DEFENDANTS, including but not limited to, a
17 reduction in the number of jobs assigned and/or termination of employment.

18 51. For example, based on information and belief, if PLAINTIFF and/or other Aggrieved
19 Employees canceled and/or declined specific job assignments/job assignments in certain
20 locations/areas, PLAINTIFF and/or other Aggrieved Employees were threatened with and/or
21 subjected to disciplinary action by DEFENDANTS, including but not limited to, a reduction in the
22 number of jobs assigned and/or termination of employment. DEFENDANTS hired PLAINTIFF
23 and other Aggrieved Employees without any set end date for their services. PLAINTIFF's and other
24 Aggrieved Employees' respective terms of employment with DEFENDANTS were/are indefinite,
25 and PLAINTIFF and other Aggrieved Employees could have been /can be terminated by
26 DEFENDANTS at will or PLAINTIFF and other Aggrieved Employees could/can quit at any time.
27 DEFENDANTS require/required that PLAINTIFF and other Aggrieved Employees report to
28 DEFENDANTS consistently and/or daily via text message and/or through DEFENDANTS' mobile

1 app and provide updates on the jobs and/or assignments completed for the day. As a result,
2 DEFENDANTS controlled and directed PLAINTIFF's and continues to control and direct other
3 Aggrieved Employees' work.

4 52. The work PLAINTIFF and the Aggrieved Employees perform/performed work
5 is/was entirely within the usual course of the DEFENDANTS' business of providing delivery
6 service services. DEFENDANTS are in the business of providing pickup and/or delivery services,
7 and PLAINTIFF and Aggrieved Employees work/worked in various positions, including but not
8 limited to as delivery drivers and/or similar title(s) in order to conduct DEFENDANTS' business.
9 The work that PLAINTIFF and the Aggrieved Employees perform/performed is/was therefore not
10 a distinct occupation or an incidental or tangential part of DEFENDANTS' operations, but rather
11 is/was central to DEFENDANTS' business.

12 53. PLAINTIFF and the Aggrieved Employees are not/were not customarily engaged in
13 an independently established trade, occupation, or business of the same nature as the work they
14 perform/performed for DEFENDANTS. Instead, DEFENDANTS required PLAINTIFF and other
15 Aggrieved Employees to present themselves as workers for "Spark" and/or as "Spark Driver(s)"
16 and/or "Walmart" and/or DEFENDANTS. PLAINTIFF and the Aggrieved Employees do not/did
17 not incur profits or losses; instead, DEFENDANTS manage/managed the business operation,
18 attract/attracted any investors and customers, advertise/advertised to potential customers/clients and
19 secure/secured customers/clients. PLAINTIFF and the Aggrieved Employees do not/have not made
20 any capital investment in any of DEFENDANTS' facilities or advertising or DEFENDANTS'
21 mobile app/other electronic systems. PLAINTIFF and the Aggrieved Employees do not own any
22 business enterprise, do not exercise any business management skills, and do not maintain any
23 separate business structures or facilities. PLAINTIFF and the Aggrieved Employees do not hire or
24 subcontract other individuals to provide additional services to customers as independent contractors
25 in business for themselves would do.

26 54. Nevertheless, DEFENDANTS unilaterally label PLAINTIFF and other Aggrieved
27 Employees as independent contractors and requires them to enter into contracts labeling them as such,
28 when they in fact, are not independent contractors.

1 55. Based on the work relationship described above, PLAINTIFF and the Aggrieved
2 Employees were at all relevant times DEFENDANTS' non-exempt employees – not independent
3 contractors. Thus, DEFENDANTS' conduct constitutes an intentional, willful pattern and/or
4 practice of misclassification (See, e.g., Labor Code section 226.8).

5 56. DEFENDANTS misclassified and continues to misclassify PLAINTIFF and other
6 Aggrieved Employees as independent contractors to try to evade California labor laws that protect
7 employees, such as but not limited to, minimum and overtime wage and sick pay laws, workers'
8 compensation laws, expense reimbursement requirements, record-keeping requirements, wage
9 statement requirements, and requirements as to the timely payment of wages during and upon
10 separation of employment.

11 57. As part of its misclassification scheme, DEFENDANTS has failed and continues to
12 fail to pay minimum and overtime wages, violated and continues to violate sick pay requirements,
13 failed and continues to fail to secure workers' compensation, failed and continues to fail to
14 reimburse expenses, failed and continues to fail to keep accurate and complete payroll records, failed
15 and continues to fail to furnish timely, accurate itemized wage statements, failed and continues to
16 fail to pay all wages due and owing upon separation of employment, and failed and continues to fail
17 to pay all wages owed every pay period, among other labor code violations, described in further
18 detail below.

19 58. **Violation of Labor Code section 976.** Labor Code section 976 provides that "No
20 person shall publish or cause to be published any advertisement, solicitation or communication in
21 any newspaper, poster, or letter, offering employment as a salesman, broker or agent whether as an
22 employee or independent contractor, which advertisement, solicitation or communication (a) is
23 willfully designed to mislead any person as to compensation or commissions which may be earned;
24 or (b) falsely represents the compensation or commissions which may be earned."

25 59. Based on information and belief, DEFENDANTS have a policy and/or practice of
26 offering prospective employees, including Aggrieved Employees, a higher compensation and
27 commission that is misleading as it falsely represents the compensation or commission that will be
28 earned during employment, as the actual compensation or commission earned is lower than that

1 which is offered to induce employment or continued employment.

2 60. For example, in an effort to procure employees, DEFENDANTS publish
3 advertisement(s), solicitation(s) and/or communication(s) in newspaper(s), poster(s) and/or letter(s)
4 offering employment as a salesman, and/or broker and/or agent with compensation paid according
5 to Prop 22, including but not limited to, certain compensation amounts for various types of driving
6 work, however, as described herein, DEFENDANTS do not actually pay Aggrieved Employees all
7 money due under Prop 22. Such a practice or policy is in violation of Labor Code section 976.

8 61. **Violation of Labor Code Section 212 and 213.** Based on information and belief,
9 DEFENDANTS required Aggrieved Employees to be paid their paychecks via money/pay card
10 despite not getting their authorization to be paid by money card in violation of Labor Code Sections
11 212 and 213. Based on information and belief, Aggrieved Employees did not receive wage
12 statements, nor did they have online access to same. Moreover, based on information and belief, the
13 money cards required Aggrieved Employees to incur fees in violation of Labor Code Section 212.
14 Furthermore, Aggrieved Employees were improperly required to incur business expenses that are
15 supposed to be the responsibility of the employer, including but not limited to, fees incurred in
16 connection with the money cards, in violation of Labor Code Section 2802, 212 and 221.

17 62. For example, based on information and belief, DEFENDANTS required PLAINTIFF
18 and/or other Aggrieved Employees to be paid their paychecks via money/pay card despite not
19 getting their authorization to be paid by money card in violation of Labor Code Sections 212 and
20 213. Based on further information and belief, DEFENDANTS required PLAINTIFF and/or other
21 Aggrieved Employees to incur fees to use money cards in order to access their earned wages in
22 violation of including but not limited to Labor Code Section 212, 221 and/or 2802.

23 63. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
24 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
25 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
26 from Aggrieved Employees paychecks, including but not limited to, from paychecks of employees
27 correctly classified as exempt, during the relevant period, including but not limited to deducting
28 costs of uniforms and/or other business costs and/or deducting wages for purported overpayments

1 from previous pay periods and/or unlawfully deducting wages for negligently damaged property
2 and/or unlawfully deducting transaction fees/pay/money card fees and/or deducting costs advanced
3 by DEFENDANTS from Aggrieved Employees' final paychecks.

4 64. For example, based on information and belief, DEFENDANTS unlawfully deducted
5 transaction fees/pay/money card fees from PLAINTIFF and/or other Aggrieved Employees' earned
6 wages. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222
7 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

8 65. Each violation results in a separate civil penalty, for each AGGRIEVED
9 EMPLOYEE, for each pay period during which the statute provisions were violated. See Lab. Code
10 §225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other
11 penalty provided in this article, every person who unlawfully withholds wages due any employee in
12 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
13 to pay each employee").

14 66. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
15 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
16 minimum wages and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and
17 Aggrieved Employees for all hours worked by virtue of, including but not limited to,
18 DEFENDANTS' willful misclassification scheme as explained above and below.

19 67. DEFENDANTS willfully misclassified PLAINTIFF and continues to willfully
20 misclassify Aggrieved Employees as independent contractors to evade California's minimum wage
21 laws.

22 68. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all
23 hours worked, resulting in the underpayment of minimum and straight time wages.

24 69. For example, DEFENDANTS suffered and permitted Aggrieved Employees to work
25 off the clock without the payment of wages, as DEFENDANTS failed to record the total number of
26 actual hours worked and failed to instruct Aggrieved Employees to record their actual hours worked
27 and further failed to provide any way for them to record their actual hours worked.

28 70. Aggrieved Employees were not compensated for all time worked, including but not

1 limited to, all time spent making pre-trip and post-trip inspections, time spent fueling,
2 cleaning/washing their vehicles, setting up, time spent completing paperwork, loading, unloading,
3 all waiting and/or standby time between jobs and tasks and/or all driving time including but not
4 limited to time spent driving between pickup and/or delivery locations, all time wherein
5 DEFENDANTS required they remain in immediate physical proximity to their vehicles, all time
6 spent communicating with DEFENDANTS and/or DEFENDANTS' clients, including but not
7 limited to, time spent updating DEFENDANTS as to the status of deliveries, time spent
8 communicating with DEFENDANTS and/or DEFENDANTS' clients regarding deliveries and/or
9 scheduling and/or other work tasks and/or time spent returning equipment to DEFENDANTS'
10 facilities and/or other locations as assigned by DEFENDANTS. For example, PLAINTIFF was
11 consistently required to perform pre-shift and/or post-shift off-the-clock work that was neither
12 recorded nor compensated. For example, PLAINTIFF was not compensated at all and/or in full for
13 including but not limited to all driving time, resulting in consistent off-the-clock work,
14 DEFENDANTS' failure to pay PLAINTIFF for all hours worked and the underpayment of wages
15 owed to PLAINTIFF.

16 71. Based on information and belief, at times, at times, DEFENDANTS instituted a
17 piece-rate-based compensation scheme that resulted in pay periods during which Aggrieved
18 Employees were denied the minimum wage for all hours worked. For example, on information and
19 belief, at times, DEFENDANTS paid Aggrieved Employees on a strictly piece-rate basis (e.g., per
20 delivery/pickup and/or a flat percentage of invoice for service performed), at least during some pay
21 periods, during the relevant time period. However, based on information and belief, DEFENDANTS
22 failed to separately compensate Aggrieved Employees for all non-piece rate related activities/all
23 non-productive time, including but not limited to, all rest breaks, travel time between
24 jobs/assignments, time spent preparing for jobs/assignments, time spent completing work-related
25 paperwork and/or reviewing DEFENDANTS' policies and or standby and/or waiting time between
26 jobs and/or tasks, time spent accessing and/or troubleshooting DEFENDANTS' electronic
27 systems/apps, time spent communicating with DEFENDANTS, including but not limited to, time
28 spent updating DEFENDANTS as to the status of jobs/assignments, time spent communicating with

1 DEFENDANTS regarding customers/clients and/or scheduling and/or other work tasks and/or time
2 spent purchasing, compiling and/or maintaining work tools, equipment and/or supplies required to
3 perform their assigned job duties, and/or performing work duties that otherwise fall outside of the
4 piece-rate pay criteria. DEFENDANTS' failure to separately compensate Aggrieved Employees for
5 their rest periods and/or other non-productive time and/or failure to compensate them at the correct
6 rates for all non-productive time including rest periods resulted in the failure to pay Aggrieved
7 Employees for all hours worked and violations of California wage and hour laws, including but not
8 limited to, Labor Code sections 226.2 and/or 1197. Based on information and belief,
9 DEFENDANTS further failed to include this information on these employees' wage statements
10 required by Labor Code section 226.2.

11 72. Based on information and belief, DEFENDANTS failed to pay Aggrieved
12 Employees for time they were required to spend completing orientation, policy questionnaires,
13 and/or time spent completing the onboarding process including but not limited to reviewing various
14 documents and policies provided by DEFEDANTS. Based on information and belief, this work time
15 was completed off-the-clock and was not compensated. For example, based on information and
16 belief, DEFENDANTS required Aggrieved Employees to review and sign various types of policies
17 and documents, including but not limited to, safety guidelines/safety awareness certifications,
18 among other documents, but they were not paid for all time spent reviewing and/or completing
19 certification as directed by DEFENDANTS.

20 73. Furthermore, based on information and belief, DEFENDANTS' electronic systems
21 and/or app at times malfunctioned such that Aggrieved Employees were at times required to spend
22 time either reinitiating and/or otherwise troubleshooting the system and/or perform other off-the-
23 clock work in an effort to assist DEFENDANTS in troubleshooting its faulty technology. This time
24 spent under DEFENDANTS' control, including but not limited to, time spent troubleshooting
25 DEFENDANTS' electronic/technology systems/app, communicating with DEFENDANTS
26 regarding same was not recorded and not compensated and resulted in unpaid minimum wages and
27 unpaid overtime wages owed to Aggrieved Employees.

28 74. As such, PLAINTIFF and other Aggrieved Employees were not paid for all work

1 time. DEFENDANTS were and are required to pay PLAINTIFF and other Aggrieved Employees
2 minimum wages for all time worked. DEFENDANTS failed and continue to fail to ensure that
3 PLAINTIFF and other Aggrieved Employees receive the applicable minimum wage for all hours
4 worked. Instead, DEFENDANTS paid PLAINTIFF and other Aggrieved Employees on a piece rate
5 basis and/or based on a flat rate/percentage of the invoice price of each service performed
6 irrespective of how many hours they worked, thereby depriving Aggrieved Employees of all owed
7 minimum wages and all owed overtime wages.

8 75. Moreover, by charging PLAINTIFF and other Aggrieved Employees with fees for
9 services and/or tools required to perform their job duties, DEFENDANTS deprived PLAINTIFF
10 and other Aggrieved Employees of allowed minimum wages for all hours worked.

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

14 77. DEFENDANTS' failure to pay for all time worked by virtue of its misclassification
15 scheme and/or other off-the-clock work practices and policies, resulted in the underpayment of
16 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
17 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
18 forty (40) hours in a week.

19 78. Based on information and belief, DEFENDANTS had actual and/or constructive
20 knowledge that its misclassification scheme and/or other off-the-clock work resulted in the
21 underpayment of minimum wages owed to PLAINTIFF and other Aggrieved Employees, in
22 violation of California's minimum wage laws.

23 79. **Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an
24 employer to pay employees compensated on a piece-rate basis separately for rest and recovery
25 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an
26 employer to include on the wage statements for these employees the total hours of compensable rest
27 and recovery period, the total hours for other non-productive time, the rates of compensation for
28 these hours, and the gross wages paid for these hours. In addition, the statute requires that employees

1 shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the
2 higher of: (i) an average hourly rate determined by dividing the total compensation for the
3 workweek, exclusive of compensation for rest and recovery periods and any premium compensation
4 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,
5 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to
6 employees compensated on a commission basis.

7 80. Based on information and belief, DEFENDANTS failed to compensate PLAINTIFF
8 and other Aggrieved Employees who were paid solely on a piece rate (e.g., per
9 load/delivery/trip/mile/day) and/or commission basis separately for the rest periods and
10 nonproductive time, and/or failed to pay them for this time at the correct rates. Based on information
11 and belief, DEFENDANTS further failed to include this information on Aggrieved Employees'
12 wage statements. As such, DEFENDANTS failed to comply with Labor Code section 226.2.

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

23 82. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
24 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
25 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
26 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
27 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
28 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of

1 used sick leave and the balance of paid sick leave.

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

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

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

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

25 87. During the relevant period, DEFENDANTS failed to provide PLAINTIFF and other
26 Aggrieved Employees with accurate wage statements that complied with Labor Code section 226.
27 DEFENDANTS either failed/fails to provide wage statements at all or failed/fails to provide wage
28 statements containing all statutorily required information pursuant to Labor Code section 226.

1 88. To the extent wage statements were issued at all, the wage statements failed to
2 indicate the earned gross and net wages earned during the pay period, the correct applicable rates of
3 pay for all hours worked, and the total hours worked by PLAINTIFF and Aggrieved Employees (by
4 virtue of DEFENDANTS' willful misclassification scheme and/or payment based on a flat rate
5 and/or piece-rate basis regardless of the number of hours worked and/or other unlawful policies and
6 practices described above) which results in a violation of Labor Code section 226(a).

7 89. Based on information and belief, to the extent DEFENDANTS provided wage
8 statements to Aggrieved Employees, the wage statements failed to list the total hours worked, in
9 violation of including but not limited to, Labor Code section 226 (a)(2).

10 90. Failure to list all hours worked on a wage statement gives rise to an inference of
11 injury under Labor Code Section 226 (Maldonado v. Epsilon Plastics, Inc., (2018) 22 Cal.App.5th
12 1308, 1337).

13 91. Moreover, to the extent wage statements were provided, they fail to include the
14 number of piece-rate units earned and any applicable piece rate pay, fail to include all deductions,
15 fail to include the inclusive dates of the pay period, fail to include any applicable hourly rates in
16 effect during the pay period and the corresponding number of hours worked at each hourly rate, in
17 violation of Labor Code section 226(a).

18 92. Moreover, based on information and belief, to the extent any wage statements were
19 provided, they fail to list the correct name and/or address of the legal entity that is the employer, in
20 violation of Labor Code section 226(a)(8).

21 93. Based on information and belief, DEFENDANTS failed to separately compensate
22 Aggrieved Employees for their rest periods and/or other non-productive time and/or failure to
23 compensate them at the correct rates for all non-productive time including rest periods when such
24 employees were paid on a piece rate basis, resulting in unpaid wages and violations of Labor Code
25 section 226.2, and further failed to include this information on these employees' wage statements
26 (to the extent any wage statements were provided) as required by Labor Code section 226.2.

27 94. As a result, to the extent DEFENDANTS provided wage statements to PLAINTIFF
28 and Aggrieved Employees, the wage statements were not accurate and did not include all of the

1 statutorily required information. As DEFENDANTS either failed to issue wage statements at all
2 and/or failed to provide wage statements containing all statutorily required information pursuant to
3 Labor Code section 226, DEFENDANTS violated Labor Code section 226.

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

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

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

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

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

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

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

11 99. These violations subject DEFENDANTS to civil penalties under Labor Code section
12 203, 210, and/or 256.

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

19 101. Based on information and belief, DEFENDANTS shifted the costs of doing business
20 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
21 to, money card fees and/or other business fees and/or business costs, uniforms and/or use of
22 PLAINTIFF's and other Aggrieved Employees' cellphones/mobile devices and data usage and/or
23 cost of internet, vehicle mileage and related expenses.

24 102. For example, Aggrieved Employees were improperly required to incur business
25 expenses that are supposed to be the responsibility of the employer, including but not limited to,
26 fees incurred in connection with the money cards, in violation of Labor Code Section 2802, 212 and
27 221.

28 103. For example, DEFENDANTS required Aggrieved Employees to use their personal

1 cell phones/mobile devices to carry out their assigned job duties, including but not limited to, to
2 download and use DEFENDANTS' required app for communicating with DEFENDANTS and/or
3 DEFENDANTS' customers/clients, further requiring Aggrieved Employees to use their personal
4 cell phones/mobile devices to communicate with DEFENDANTS, including but not limited to, to
5 provide status updates regarding jobs, scheduling and/or other work tasks. DEFENDANTS did not
6 provide Aggrieved Employees with any reimbursement at all for the cell phone/data usage.

7 104. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees
8 were also required to use their home computers, home internet, home electricity and/or other
9 personal tools, utilities, equipment and/or devices in order to carry out their assigned job duties. As
10 a result of working from home/remotely, Aggrieved Employees were required to use their home
11 internet, electricity, and other utilities in the discharge of their job duties. Based on information and
12 belief, DEFENDANTS lacked and continue to lack a policy to reimburse employees who regularly
13 increased utility expenses as a result of working remotely/from home. Aggrieved Employees'
14 increased utility and internet expenses were expenses for which DEFENDANTS were required to
15 reimburse Aggrieved Employees a reasonable percentage based on their required business use
16 because said expenses were necessarily incurred by Aggrieved Employees as a direct consequence
17 of the discharge of their duties of employment. Based on information and belief, DEFENDANTS
18 failed to reimburse Aggrieved Employees for expenses Aggrieved Employees incurred as a result
19 of being required to work remotely and/or from their homes, including but not limited to, increased
20 utility, increased data plan charges and/or internet expenses.

21 105. For example, based on information and belief, DEFENDANTS required PLAINTIFF
22 and/or other Aggrieved Employees to use their personal devices to communicate with
23 DEFENDANTS via email regarding late payment of wages and/or regarding work scheduling
24 and/or other work tasks but were not reimbursed by DEFENDANTS at all for the business expenses
25 incurred in connection with this remote work/work from home, in violation of Labor Code section
26 2802.

27 106. PLAINTIFF and other Aggrieved Employees were improperly required to pay for
28 business expenses that are legally the responsibility of the employer, including but not limited to,

1 cell phone/mobile device data plan charges incurred as a result of DEFENDANTS' requirement that
2 PLAINTIFF and other Aggrieved Employees download and use DEFENDANTS' app for
3 communicating with DEFENDANT and or DEFENDANTS' customers as well as costs associated
4 with PLAINTIFF and other Aggrieved Employees having to use their personal vehicles on the job,
5 – including but not limited to, cost of fuel, mileage, and wear and tear on the vehicles.

6 107. For example, PLAINTIFF and other Aggrieved Employees were required to use their
7 personal vehicles to perform pickups and/or make deliveries for DEFENDANTS and/or use their
8 personal vehicles for other work purposes without receiving any and/or full reimbursement from
9 DEFENDANTS for the vehicle-related expenses they incurred in connection therewith, including
10 but not limited to, cost of fuel, mileage, and wear and tear on the vehicles. As such, DEFENDANTS
11 failed to compensate Aggrieved Employees at the legally mandated Internal Revenue Service (IRS)
12 per mile compensation rates in effect during the relevant period.

13 108. Based on information and belief, DEFENDANT further failed to reimburse
14 Aggrieved Employees for reasonable expenses, including but not limited to, hand tools and/or
15 equipment required to carry out their assigned job duties, such as but not limited to, face masks
16 and/or cleaning supplies and/or other work tools and/or equipment required to carry out the job
17 duties assigned to them by DEFENDANTS.

18 109. Based on information and belief, Aggrieved Employees were not reimbursed for the
19 cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or
20 maintaining work uniforms/clothing and/or work tools and/or equipment.

21 110. Based on information and belief, DEFENDANTS regularly failed to reimburse and
22 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
23 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
24 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
25 assigned by DEFENDANTS.

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

1 2802.

2 112. Unlawful Agreements-Unlawful Criminal History Inquiries.

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

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

12 115. *Unlawful PAGA Waiver*

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

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

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

27 119. Upon information and belief, DEFENDANTS required PLAINTIFF and other
28 Aggrieved Employees to agree in writing to waive their right to a trial of PAGA claims in violation

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

4 120. **Failure to Secure Compensation in Violation of Labor Code section 3700 et seq.:**
5 DEFENDANTS did not secure workers' compensation for PLAINTIFF and other Aggrieved
6 Employees, in violation of California Labor Code section 3700, 3700.5, 3712, and 3715. Because
7 of DEFENDANTS' violations of those statutes, DEFENDANTS are liable for civil penalties in the
8 amounts specified in California Labor Code section 3700.5 and/or PAGA, for each Aggrieved
9 Employee.

10 121. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
11 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
12 same herein described unlawful practices to all Aggrieved Employees that it applied to PLAINTIFF.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
15 **2698, ET SEQ.**

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

17 122. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

18 123. PLAINTIFF brings this cause of action as a representative action on behalf of
19 PLAINTIFF and other Aggrieved Employees and the State of California.

20 **Willful Misclassification as an Independent Contractor**

21 124. California Labor Code section 226.8 makes it illegal to willfully misclassify an
22 employee as an independent contractor, providing: "[i]t is unlawful for any person or employer to
23 engage in any of the following activities: (1) Willful misclassification of an individual as an
24 independent contractor. (2) Charging an individual who has been willfully misclassified as an
25 independent contractor a fee, or making any deductions from compensation, for any purpose,
26 including for goods, materials, space rental, services, government licenses, repairs, equipment
27 maintenance, or fines arising from the individual's employment where any of the acts described in
28 this paragraph would have violated the law if the individual had not been misclassified." California

1 Labor Code section 226.8(a).

2 125. At all relevant times, DEFENDANTS misclassified PLAINTIFF and other
3 Aggrieved Employees as independent contractors as opposed to employees to evade California wage
4 and hour laws. To qualify as an independent contractor under California law, (1) the worker must
5 be free from the employer's control and direction in the performance of the work, both under the
6 contract for the performance of the work and in fact; (2) the work performed must be outside the
7 usual course of the employer's business; and (3) the worker must not be customarily engaged in an
8 independently established trade, occupation, or business of the same nature as the work he
9 performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903;
10 Labor Code Section 2775. All three conditions must be met, or the worker has been misclassified.

11 126. Despite DEFENDANTS efforts to evade California wage and hour laws by setting
12 up an alleged contractor scheme, the reality is that PLAINTIFF and other Aggrieved Employees are
13 and were, in fact, at all relevant times, employees according to the law. As explained above:

14 127. (a) PLAINTIFF and the Aggrieved Employees are/were not free from
15 DEFENDANTS' control and direction in the performance of work, both under the contract for the
16 performance of the work and in fact; (b) the work PLAINTIFF and the Aggrieved Employees
17 perform/performed work is/was entirely within the usual course of DEFENDANTS' business; and
18 (c) PLAINTIFF and the Aggrieved Employees are not/were not customarily engaged in an
19 independently established trade, occupation, or business of the same nature as the work they
20 perform/performed for DEFENDANTS.

21 128. DEFENDANTS misclassify other Aggrieved Employees as independent contractors
22 to try to evade California labor laws that protect employees, including but not limited to, minimum
23 wage law for all Aggrieved Employees and overtime laws for non-driver Aggrieved Employees,
24 wage and sick pay laws, workers' compensation laws, expense reimbursement requirements, record-
25 keeping requirements, wage statement requirements, and requirements as to the timely payment of
26 wages during and upon separation of employment among others described herein.

27 **Failure to Keep Accurate Records**

28 129. California Labor Code § 1174 requires employers to keep "accurate and complete"

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

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

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

15 **Meal Period Violations**

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

21 133. Employers must also provide employees with a second duty-free, uninterrupted thirty
22 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
23 be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only
24 under the following circumstances: (1) if an employee's total work period in a day is over five (5)

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 "in 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 hours but no more than six (6) hours, the required meal period may be waived by mutual consent of
2 the employer and employee; and (2) if an employee's total work period in a day is over ten (10)
3 hours but no more than twelve (12) hours, the required second meal period may be waived by mutual
4 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon
5 information and belief, PLAINTIFF did not sign a valid meal period waiver throughout her
6 employment by DEFENDANTS.

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

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

22 136. Aggrieved Employees that worked in a non-driver position were entitled to meal
23 periods, yet DEFENDANTS have a consistent policy and/or practice of not providing lawful meal
24 periods to such non-driver Aggrieved Employees and/or providing compensation in lieu thereof.
25 Based on information and belief, non-driver Aggrieved Employees were regularly unable to take
26 timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being forced to
27 take late meal periods, interrupted meal periods and/or work through part or all of their meal periods
28 due to DEFENDANTS' misclassification scheme and/or the nature and constraints of their job

1 duties.

2 137. Aggrieved Employees that worked in a non-driver position consistently worked
3 shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

4 138. Aggrieved Employees that worked in a non-driver position did not receive legally
5 compliant thirty (30) minute first meal breaks. Based on information and belief, non-driver
6 Aggrieved Employees were consistently unable to take timely, off duty, thirty-minute, uninterrupted
7 meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work
8 through part or all their meal periods due to understaffing, the nature and constraints of their job
9 duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or
10 skip meal breaks completely.

11 139. Based on information and belief, non-driver Aggrieved Employees were consistently
12 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
13 interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to
14 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
15 the need to meet DEFENDANTS' goals and expectations.

16 140. Based on information and belief, DEFENDANTS required non-driver Aggrieved
17 Employees to complete off-the-clock work prior to their scheduled shift time which DEFENDANTS
18 failed to take into account when scheduling meal periods for non-driver Aggrieved Employees.
19 Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-
20 the-clock work.

21 141. Moreover, non-driver Aggrieved Employees did not receive a timely, uninterrupted
22 second meal period when working shifts over ten (10) hours in a workday.

23 142. DEFENDANTS also failed to pay premiums at the regular rate of pay for
24 missed/otherwise unlawful meal periods in violation of California law.

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

1 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

2 **Rest Period Violations**

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

17 145. Aggrieved Employees that worked in a non-driver position were entitled to rest
18 periods, yet based on information and belief, such Aggrieved Employees did not receive legally
19 compliant, timely 10-minute rest periods for every four (4) hours worked or major fraction thereof.

20 146. Non-driver Aggrieved Employees were not adequately informed, authorized,
21 instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based
22 on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of
23 duty-free rest periods. Based on information and belief, DEFENDANTS did not have a have a
24 compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period
25 policy in practice. For example, any purported rest periods were interrupted, cut short, on duty,
26 and/or late due to the nature and constraints of non-driver Aggrieved Employees’ job duties.

27 147. Based on information and belief, non-driver Aggrieved Employees’ rest periods were
28 interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and

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

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

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

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

11 151. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
12 which non-driver Aggrieved Employees experienced a missed or otherwise unlawful rest period in
13 violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.
14 DEFENDANTS failed to pay non-driver Aggrieved Employees, an additional hour of wages at their
15 respective regular rates of pay for each workday a proper rest period was not provided.
16 DEFENDANTS either failed to pay a rest period premium at all for each workday a lawful rest
17 period was not provided and/or failed to pay the proper rest period premium for failure to incorporate
18 all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay,
19 and/or other non-discretionary compensation into the regular rate of compensation for purposes of
20 calculating the owed rest period premium.

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

24 **Minimum wages, Straight time wages, and Overtime Wage Violations**

25 153. 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 223
28 prohibits the pay of less than a statutory or contractual wage scale. Pursuant to California Labor

1 Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an
2 employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day,
3 at a regular rate no less than the mandated minimum wage. Payment to an employee of less than
4 the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code
5 section 224 only permits deductions from wages when the employer is required or empowered to
6 do so by state or federal law or when the deduction is expressly authorized in writing by the
7 employee for specified purposes that do not have the effect of reducing the agreed upon wage.

8 154. DEFENDANTS suffered and permitted PLAINTIFF and the Aggrieved Employees
9 to work off the clock without wages, including but not limited to pre-shift and post-shift off-the-
10 clock work as well as other off-the-clock work described above.

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

13 156. Moreover, as explained above, DEFENDANTS had and continue to have a policy
14 and practice of unlawfully deducting wages from PLAINTIFF and Aggrieved Employees’
15 paychecks, such as, but not limited to, unlawful deductions for costs and/or fees for dispatch services
16 and/or other administrative services and/or other fines and/or fees, resulting in violations of
17 California wage and hour laws, including but not limited to, Labor Code sections 224 and 1197.

18 157. Moreover, as explained above, DEFENDANTS’ failure to separately compensate
19 Aggrieved Employees for their rest periods and/or other non-productive time and/or failure to
20 compensate them at the correct rates for all non-productive time including rest periods resulted in
21 the failure to pay Aggrieved Employees for all hours worked and violations of California wage and
22 hour laws, including but not limited to, Labor Code sections 226.2 and 1197.

23 158. Based on information and belief, DEFENDANTS had actual or constructive
24 knowledge that its policy and practice of misclassifying non-exempt employees as independent
25 contractors, its unlawful deductions of wages, its policy and practice of payment according to
26 scheduled work time rather than actual work time, and/or other mandated off-the-clock work
27 resulted in the underpayment of minimum wages and straight time wages owed to PLAINTIFF and
28 other Aggrieved Employees. DEFENDANTS’ unlawful policies and practices also lead to unpaid

1 overtime wages owed to Aggrieved Employees that worked in a non-driver position. Such non-
2 driver Aggrieved Employees were entitled to overtime wages equal to 1.5 times the employee's
3 regular rate of pay for all hours worked in excess of 40 hours per week or 8 hours per day. *See* Labor
4 Code 510 and the applicable Wage Order section 3. Such non-driver Aggrieved Employees were
5 also entitled to overtime pay equal to double the regular hourly rate of pay for each hour worked
6 beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the
7 seventh consecutive day of work in a work week. *Ibid.*

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

12 **Violation of Labor Code Section 226.2**

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

24 161. During the relevant period, DEFENDANTS failed to comply with Labor Code
25 section 226.2. Specifically, based on information and belief, DEFENDANTS failed to compensate
26 Aggrieved Employees who were paid on a piece-rate basis (e.g., per load/delivery/trip/mile/day)
27 and or commission basis separately for the rest periods and nonproductive time, and/or failed to pay
28 them for this time at the correct rates. Based on information and belief, EMPLOYER further failed

1 to include the information on these employees' wage statements required by this statute.

2 **Statutory Wage Violations**

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

14 **Refusal to Make Payment**

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

24 **Business Expense Violations**

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

6 165. Among other things, under California law, when employees must use their personal
7 cellphones for work-related purposes, the employer must reimburse them for a reasonable
8 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
9 Cal.App.4th 1137, 1140. California law also requires employers to reimburse employees for
10 automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas,
11 and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th
12 554. To show liability, an employee will only need to show that he or she was required to use their
13 personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Further,
14 “any contract or agreement, express or implied, made by any employee to waive the benefits of this
15 article or any part thereof, is null and void, and this article shall not deprive any employee or his
16 personal representative of any right or remedy to which he is entitled to under the laws of this State.”
17 *See* Cal. Lab. Code section 2804.

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

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

24 168. Pursuant to California Labor Code section 2802, PLAINTIFF and Aggrieved
25 Employees are entitled to be reimbursed for all reasonable expenses associated with carrying out
26 DEFENDANTS’ orders and/or carrying out the duties assigned by DEFENDANTS.

27 169. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
28 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor

1 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
2 Code § 2802 and the applicable Wage Order.

3 **Wage Statement Violations**

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

13 171. As DEFENDANTS failed to provide non-driver Aggrieved Employees with meal
14 and rest periods that complied with Labor Code section 226.7, to the extent wage statements were
15 issued by DEFENDANTS (if any), the wage statements failed and continue to fail to correctly set
16 forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours
17 worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in
18 violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the
19 pay period and the corresponding number of hours worked at each hourly rate by the employee, in
20 violation of Labor Code section 226(a)(9).

21 172. Moreover, due to violations detailed above, including but not limited to,
22 DEFENDANTS' failure to pay straight time wages and minimum wages for all hours worked
23 including non-productive time when paid on a piece rate basis, and failure to pay all sick leave
24 wages at the proper rates, DEFENDANTS have violated California Labor Code § 226 by willfully
25 failing to furnish Aggrieved Employees with accurate, itemized wage statements that listed the gross
26 and net wages earned and the correct applicable rates of pay for all hours worked.

27 173. As explained above, to the extent any wage statements were issued at all, wage
28 statements issued by DEFENDANTS failed to list the "total hours worked" by PLAINTIFF and

1 Aggrieved Employees (by virtue of DEFENDANTS' willful misclassification scheme, payment
2 according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock
3 work policies and practices all described in greater detail *supra*), which results in a violation of
4 Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an
5 inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22
6 Cal.App.5th 1308, 1337). Additionally, to the extent any wage statements were provided,
7 DEFENDANTS failed to issue accurate wage statements in accordance with Labor Code section
8 226, by issuing wage statements that failed to list the total hours of compensable non-productive
9 time, and the total hours of rest and/or recovery periods, the rate of compensation for the non-
10 productive time and/or rest/recovery periods, and the gross wage earned for the non-productive time
11 and for the rest/recovery periods during the pay period for which the Aggrieved Employees were
12 paid on a piece rate basis, in violation of Labor Code section 226.2.

13 174. Based on information and belief, to the extent wage statements were provided, they
14 fail to include the number of piece-rate units earned and any applicable piece-rate, fail to include all
15 deductions, fail to include the inclusive dates of the pay period, fail to include any applicable hourly
16 rates in effect during the pay period and the corresponding number of hours worked at each hourly
17 rate. As such, DEFENDANTS violated Labor Code section 226(a).

18 175. Separately, and independent from the above allegations, as explained above, to the
19 extent DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees the wage
20 statements failed to list the correct name and/or address of the legal entity that is the employer, in
21 violation of Labor Code section 226(a)(8).

22 176. DEFENDANTS' failure to issue wage statements at all and/or accurately list all
23 hours worked on all wage statements caused confusion to PLAINTIFF and caused and continues to
24 cause confusion to other Aggrieved Employees over whether they received all wages owed to them.

25 177. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
26 they could not easily determine whether they received all wages owed to them and whether they
27 were paid for all hours worked.

28 178. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or

1 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered
2 injury as they could not contact their employer regarding any question(s) they had about wages paid.

3 179. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
4 Aggrieved Employees with accurate, itemized wage statements.

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

14 181. Pursuant to California Labor Code section 226(e), PLAINTIFF and Aggrieved
15 Employees are entitled to recover fifty dollars per employee for the initial pay period in which a
16 Section 226 violation occurred and one hundred dollars per employee per violation for each
17 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

18 182. Pursuant to California Labor Code § 226(h), PLAINTIFF and Aggrieved Employees
19 are entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
20 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
21 provide currently employed Aggrieved Employees with inaccurate wage statements in violation of
22 California Labor Code § 226(a). Currently employed Aggrieved Employees have no adequate legal
23 remedy for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing
24 unlawful conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS'
25 compliance with California Labor Code § 226(a).

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

2 **Standard Conditions of Labor Violations**

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

11 **Sick Leave Violations**

12 185. DEFENDANTS violated California's paid sick leave laws including, Labor Code
13 section 245-248.5 and 233-234. DEFENDANTS failed and continue to fail to provide any sick leave
14 pay to PLAINTIFF and other Aggrieved Employees.

15 186. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
16 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
17 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
18 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
19 Aggrieved Employees' intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF
20 and other Aggrieved Employees would have used their paid sick leave at least prior to their
21 respective separations, for as on several occasions thereafter, he or she would have been entitled to
22 use the banked sick leave and earn appropriate compensation.

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

27 188. Upon information and belief, DEFENDANTS failed and continue to fail to comply

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

1 with Labor Code section 246, by failing to provide PLAINTIFF and other Aggrieved Employees
2 with a Labor Code section 226 wage statement, or separate writing containing the amount of paid
3 sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it
4 pays wages.

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

6 190. Accordingly, the Aggrieved Employees are entitled to all appropriate relief under the
7 PAGA, the aforementioned code provisions including but not limited to Labor Code section 233
8 and 234, and seek injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by
9 law.

10 **Untimely Payment of Final Wages**

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

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

24 193. Based on information and belief, DEFENDANTS failed and continue to fail to timely
25 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
26 violation of Labor Code section 201-202. Moreover, final paychecks once provided to Aggrieved
27 Employees do not include all wages owed as they are devoid of, including but not limited to, all
28 owed minimum wages, straight time wages, vacation pay, and all owed sick leave and/or paid time

1 off wages at the properly accrued rates.

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

5 **Violation of Labor Code Section 208**

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

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

15 **Violation of Labor Code Section 212 and 213**

16 197. Based on information and belief, DEFENDANTS required Aggrieved Employees to
17 be paid their paychecks via money/pay card despite not getting their authorization to be paid by
18 money card in violation of Labor Code Sections 212 and 213. Based on information and belief,
19 Aggrieved Employees did not receive wage statements, nor did they have online access to same.
20 Moreover, based on information and belief, the money cards required Aggrieved Employees to incur
21 fees in violation of Labor Code Section 212. Furthermore, Aggrieved Employees were improperly
22 required to incur business expenses that are supposed to be the responsibility of the employer,
23 including but not limited to, fees incurred in connection with the money cards, in violation of Labor
24 Code Section 2802, 212 and 221.

25 198. For example, based on information and belief, DEFENDANTS required PLAINTIFF
26 and/or other Aggrieved Employees to be paid their paychecks via money/pay card despite not
27 getting their authorization to be paid by money card in violation of Labor Code Sections 212 and
28 213. Based on further information and belief, DEFENDANTS required PLAINTIFF and/or other

1 Aggrieved Employees to incur fees to use money cards in order to access their earned wages in
2 violation of including but not limited to Labor Code Section 212, 221 and/or 2802.

3 **Unlawful Deductions**

4 199. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
5 an employee any part of wages theretofore paid by said employer to said employee.” Based on
6 information and belief DEFENDANTS made unlawful deductions from PLAINTIFF and Aggrieved
7 Employees’ paychecks during the relevant period, by including but not limited to deducting costs
8 of uniforms, fees for dispatch services and/or other administrative services and/or tools/equipment
9 required to perform their jobs and/or other business costs and/or deducting wages for purported
10 overpayments from previous pay periods and/or unlawfully deducting wages for negligently
11 damaged property and/or deducting costs advanced by DEFENDANTS from Aggrieved
12 Employees’ final paychecks. Such a practice is in violation of including but not limited to, Labor
13 Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section
14 2699. Each violation results in a separate civil penalty, for each Aggrieved Employee, for each pay
15 period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that
16 “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article,
17 every person who unlawfully withholds wages due any employee in violation of Section 212, 216,
18 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”).

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

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

25 105. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved Employees
26 fully received the gratuities left for them by patrons, in that DEFENDANTS’ and its agents would
27 collect and/or take a portion of the gratuities for themselves, in violation of Labor Code Section 351.
28 Based on further information and belief, DEFENDANTS also failed to keep accurate records of all

tips received, in violation of Labor Code Section 353. Based on information and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to Aggrieved Employees by the next regular payday following the credit card payment, in violation of Labor Code section 351.

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

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

201. **Unlawful Agreements/ Unlawful Criminal History Inquiries.** *Unlawful Agreements.* Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." DEFENDANTS required and continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful conditions of employment including but not limited to unlawful non-compete/unlawful non-solicitation/non-disclosure agreements/provisions, and/or other unlawful agreements, including but not limited to, unlawful independent contractor and/or owner operator agreements, unlawful waivers of rights, and/or unlawful criminal as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

202. *Unlawful Inquires into Criminal History.* Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in convictions on its employment application, in violation of

1 California law.

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

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

12 205. As such, PLAINTIFF and other Aggrieved Employees continue to be subject to
13 various unlawful provisions as a condition of employment.

14 206. **Violation of Labor Code section 976:** Labor Code section 976 provides that “No
15 person shall publish or cause to be published any advertisement, solicitation or communication in
16 any newspaper, poster, or letter, offering employment as a salesman, broker or agent whether as an
17 employee or independent contractor, which advertisement, solicitation or communication (a) is
18 willfully designed to mislead any person as to compensation or commissions which may be earned;
19 or (b) falsely represents the compensation or commissions which may be earned.”

20 207. Based on information and belief, DEFENDANTS have a policy and/or practice of
21 offering prospective employees, including Aggrieved Employees, a higher compensation and
22 commission that is misleading as it falsely represents the compensation or commission that will be
23 earned during employment, as the actual compensation or commission earned is lower than that
24 which is offered to induce employment or continued employment. Such a practice or policy is in
25 violation of Labor Code section 976.

26 208. **Failure to Secure Compensation in Violation of Labor Code section 3700 et seq.:**
27 DEFENDANTS did not secure workers’ compensation for PLAINTIFF and other Aggrieved
28 Employees, in violation of California Labor Code section 3700, 3700.5, 3712, and 3715. Because

1 of DEFENDANTS' violations of those statutes, DEFENDANTS are liable for civil penalties in the
2 amounts specified in California Labor Code section 3700.5 and/or PAGA, for each Aggrieved
3 Employee.

4 209. Under the provisions of PAGA and the above mentioned Labor Code sections,
5 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
6 226.8, 245-248.5, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1197,
7 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5, 3700, 3700.5, 3712, and 3715 and all applicable
8 Wage Orders as well as all interpretations of these laws by California Courts and administrative
9 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
10 the following penalties:

11 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
12 relevant California Labor Code provisions listed herein only if permitted by the PAGA statute,
13 pursuant to Labor Code section 2699(a); and

14 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
15 violations without a civil penalty recoverable under the PAGA, all in the default amounts provided
16 by Labor Code section 2699(f).

17 c. The proper measure of penalties under PAGA is the number of violations, whether
18 those violations were committed as against PLAINTIFF or any Aggrieved Employee, whether a
19 party to this action or not.

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

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PRAYER FOR RELIEF

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

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

Dated: May 2, 2024

CROSNER LEGAL, PC

By: 

Jamie K. Serb, Esq.
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