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on behalf of the State of California
and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JORDAN SMITH, on behalf of the State of
California and all Aggrieved Employees,

Plaintiff,

v.

TD SYNnex CORPORATION, a Delaware
Corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: CIVSB2417849

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

1 Plaintiff, JORDAN SMITH, ("PLAINTIFF"), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants TD
3 SYNnex CORPORATION, a Delaware Corporation; and DOES 1-100, inclusive, (collectively
4 referred to herein as "DEFENDANTS"). PLAINTIFF is informed and believes and thereon alleges
5 as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

23 **THE PARTIES**

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

26 5. PLAINTIFF is a current employee of DEFENDANTS. PLAINTIFF worked for
27 DEFENDANTS as a non-exempt employee with a job title of Level 2 Shipping Associate and/or a
28 similar title(s) and/or job position(s) from in or around 2019 and continuing through the present. At

1 times during PLAINTIFF's employment with DEFENDANTS, PLAINTIFF worked for
2 DEFENDANTS at DEFENDANTS' Fontana, California location(s).

3 6. Defendant TD SYNnex CORPORATION is a Delaware Corporation that, at all
4 relevant times, was authorized to do business within the State of California and is doing business in
5 the State of California.

6 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
7 warehouse distribution centers, facilities and/or other location(s) in California, including but not
8 limited to the warehouse distribution centers, facilities and/or other location(s) in Fontana,
9 California. DEFENDANTS, through its various locations, serve the manufacturing and/or
10 information technology industry.¹

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

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

27
28 ¹ See <https://www.tdsynnex.com/na/us/>. Last visited on May 31, 2024

1 **JOINT LIABILITY**

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

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

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

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

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

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

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

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

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

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

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

20 **PAGA ALLEGATIONS**

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

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

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

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

13 21. PLAINTIFF, on March 25, 2024, through counsel, gave written notice by online
14 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
15 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
16 in this Complaint (“PAGA Notice”). The PAGA Notice was also mailed to DEFENDANTS via
17 certified mail.

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

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

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

1 **FACTUAL ALLEGATIONS**

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

6 26. PLAINTIFF is a current employee of DEFENDANTS.

7 27. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title
8 of Level 2 Shipping Associate and/or a similar title(s) and/or job position(s) from in or around 2019
9 and continuing through the present.

10 28. At times during PLAINTIFF's employment with DEFENDANTS, PLAINTIFF
11 worked for DEFENDANTS at DEFENDANTS' Fontana, California location(s). PLAINTIFF
12 regularly worked at least eight (8) hours per day, at times working more than eight (8) hours in a
13 workday and/or more than forty hours in a week.

14 29. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
15 hourly basis for time counted by DEFENDANTS as hours worked. PLAINTIFF was also
16 compensated with non-discretionary compensation, including but not limited to, non-discretionary
17 bonus/incentive pay and/or shift differential pay.

18 30. **Violation of Labor Code Section 970. Knowingly False Representations to**
19 **Induce Employee Relocation.** Labor Code section 970 provides in pertinent part as follows:

20 31. "No person, or agent or officer thereof, directly or indirectly, shall influence,
21 persuade, or engage any person to change from one place to another in this State or from any place
22 outside to any place within the State, or from any place within the State to any place outside, for the
23 purpose of working in any branch of labor, through or by means of knowingly false representations,
24 whether spoken, written, or advertised in printed form, concerning either:

25 32. (a) The kind, character, or existence of such work;

26 33. (b) The length of time such work will last, or the compensation therefor;..."

27 34. Based on information and belief, DEFENDANTS have a policy and practice of
28 knowingly making false representations, regarding including but not limited to, compensation, to

1 directly and/or indirectly influence, persuade, or engage Aggrieved Employees to change from one
2 place to another within California and/or from place(s) outside, including without limitation, from
3 Arizona to California, for the purpose of working for DEFENDANTS.

4 35. For example, DEFENDANTS knowingly falsely represented to PLAINTIFF,
5 including but not limited to, in DEFENDANTS' relocation offer letter to PLAINTIFF dated 9.19.23,
6 that PLAINTIFF would receive a relocation/transfer bonus of at least approximately \$15,000, in
7 exchange for PLAINTIFF relocating from Arizona to work in DEFENDANTS' Fontana, California
8 location(s).

9 36. However, after PLAINTIFF relocated to California in reliance on DEFENDANTS'
10 false representations, DEFENDANTS failed to compensate PLAINTIFF with the promised
11 relocation/transfer bonus at all and/or in full, resulting in PLAINTIFF receiving less than the
12 compensation represented by DEFENDANTS for the work at the relocated facility/location.

13 37. Based on information and belief, DEFENDANTS made these false representations
14 regarding employment compensation to PLAINTIFF to directly and/or indirectly influence,
15 persuade, or engage PLAINTIFF to relocate from Arizona to California/Fontana, California, and
16 which said false representations did in fact induce PLAINTIFF to relocate from Arizona to
17 California/Fontana, California. As such, DEFENDANTS knowingly made false representations,
18 regarding including but not limited to, compensation, to directly and/or indirectly influence,
19 persuade, or engage PLAINTIFF to change from one place to another within California and/or from
20 place(s) outside, including without limitation, from Arizona to California, for the purpose of
21 working for DEFENDANTS, in violation of including but not limited to, Labor Code Section 970.

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

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

1 offering prospective employees, including Aggrieved Employees, a higher compensation and
2 commission that is misleading as it falsely represents the compensation or commission that will be
3 earned during employment, as the actual compensation or commission earned is lower than that
4 which is offered to induce employment or continued employment. Such a practice or policy is in
5 violation of Labor Code section 976.

6 40. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
7 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
8 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
9 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
10 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
11 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
12 below.

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

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

23 43. For example, based on information and belief, DEFENDANTS required Aggrieved
24 Employees to be at their assigned workstations at the start of a scheduled shift, thereby forcing
25 Aggrieved Employees to gather work-related equipment and/or safety gear, make any necessary
26 adjustments to tools/equipment and/or perform maintenance/cleaning tasks, don work
27 clothing/uniforms and/or protective equipment, and/or complete other work tasks prior to their
28 scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock

1 work.

2 44. Based on information and belief, at times, Aggrieved Employees were required to
3 stand in line behind other employees to access DEFENDANTS' time-keeping system and/or were
4 required to spend time reinitiating DEFENDANTS' time-keeping system before they could clock
5 in for the start of their shifts and/or after completing a purported meal period.

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

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

16 47. Based on information and belief, DEFENDANTS did not compensate Aggrieved
17 Employees for all time spent donning and doffing personal protective equipment, safety equipment
18 and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses, hats/bump caps/safety helmets
19 and/or face masks) during meal periods, before the start of a scheduled shift, and after completing a
20 scheduled shift, resulting in DEFENDANTS' failure to pay Aggrieved Employees for all work time
21 and the underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

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

1 recorded and not compensated and resulted in unpaid minimum wages owed to Aggrieved
2 Employees.

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

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

9 51. Based on information and belief, Aggrieved Employees were also pressured to
10 complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals
11 and expectations.

12 52. For example, based on information and belief, Aggrieved Employees were required
13 to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-
14 related phone calls and/or messages they received to their phones and/or mobile devices and were
15 required to respond to, including but not limited to, communications from supervisors regarding
16 scheduling and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved
17 Employees.

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

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

26 55. Based on information and belief, DEFENDANTS implemented a time-rounding
27 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
28 compensable time because the time-rounding system implemented by DEFENDANTS would

1 almost always, if not always, result in understating actual compensable work time.

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

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

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

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

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

1 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
2 completely.

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

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

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

13 64. Based on information and belief, DEFENDANTS implemented policies and/or
14 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
15 during unpaid meal periods.

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

20 66. Based on information and belief, despite DEFENDANTS' failure to provide lawful
21 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
22 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
23 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
24 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
25 Employees did not receive lawful meal periods.

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

28 68. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and

1 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
2 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
3 did DEFENDANTS have any sort of compliant policy in practice.

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

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

14 71. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
15 additional hour of wages at their respective regular rates of compensation for each workday a lawful
16 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
17 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
18 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
19 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
20 compensation for purposes of calculating the owed meal period premium.

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

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

1 74. Based on information and belief, DEFENDANTS did not have a have a compliant
2 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
3 practice.

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

8 76. Based on information and belief, Aggrieved Employees' rest periods were
9 interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and
10 constraints of their job duties, and/or due to commentary from supervisors/managers pressuring
11 them to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

18 79. Based on information and belief, DEFENDANTS implemented policies and/or
19 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
20 DEFENDANTS' control during rest periods.

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

24 81. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
25 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
26 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
27 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
28 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,

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

3 82. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC
4 Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the
5 Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the
6 toilet rooms and shall be available to employees during work hours.”

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

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

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

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

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

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

12 89. Based on information and belief, DEFENDANTS issued wage statements to
13 Aggrieved Employees that fail to accurately list all deductions, in violation of Labor Code section
14 226(a)(4).

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

17 91. Based on information and belief, DEFENDANTS issued wage statements to
18 Aggrieved Employees that fail to accurately list all deductions, in violation of Labor Code section
19 226(a)(4).

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

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

28 94. As described herein, based on information and belief, DEFENDANTS also failed to

1 incorporate all forms of non-discretionary compensation earned during the pay period into the
2 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
3 of overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

11 97. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
12 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
13 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
14 from Aggrieved Employees paychecks during the relevant period including without limitation,
15 deducting business costs and/or deducting wages for purported overpayments from previous pay
16 periods and/or unlawfully deducting wages for negligently damaged property and/or unlawfully
17 deducting transaction fees/pay/money card fees and/or deducting costs advanced by
18 DEFENDANTS. Such a practice is in violation of including but not limited to, Labor Code Sections
19 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

20 98. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
21 provides as follows:

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

1 minimum wage.

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

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

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

16 103. For example, PLAINTIFF, through counsel, sent a written request for payroll and
17 personnel records to DEFENDANTS on or around including but not limited to the following dates:
18 March 19, 2024. Yet, DEFENDANTS failed to timely produce complete records within the time
19 periods delineated by California labor law.

20 104. For example, DEFENDANTS did not produce PLAINTIFF's time records. Based on
21 information and belief, DEFENDANTS failed and continues to fail to timely produce complete
22 payroll and personnel records when requested by other Aggrieved Employees. Based on information
23 and belief, DEFENDANTS failed and continue to fail to timely produce complete time, pay, and
24 personnel records when requested by other Aggrieved Employees.

25 105. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
26 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
27 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
28 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as

1 required by law, including but not limited to the following records: total daily hours worked,
2 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
3 began and ended each work period, time records of meal periods, and accurate itemized wage
4 statements.

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

11 107. **Violation of Labor Code Sections 2100-2112.** Based on information and belief,
12 DEFENDANTS had/have a policy and practice of failing to provide Aggrieved Employees, upon
13 hire, with a written description of each quota they are subject to (e.g., quantified number of tasks to
14 be performed or materials to be handled) within a defined period of time and any potential adverse
15 employment action that may result from failure to meet the quota. Based on further information and
16 belief, DEFENDANTS had/have a policy and practice of subjecting Aggrieved Employees to quotas
17 that prevented those Aggrieved Employees from taking their meal and rest periods and/or using
18 bathroom facilities and/or interfered with compliance of California's occupational health and safety
19 laws.

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

26 109. Based on information and belief, DEFENDANTS shifted the costs of doing business
27 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
28 to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of Aggrieved

1 Employees' personal cell phones/mobile devices, internet and/or data usage for work-related
2 purposes, including but not limited to, to receive and respond to work-related messages and/or phone
3 calls.

4 110. For example, based on information and belief, Aggrieved Employees were required
5 to receive and respond to work-related calls and/or messages from supervisors and/or other
6 employees regarding scheduling and/or other work tasks but were not reimbursed by
7 DEFENDANTS at all and/or in full for these business expenses.

8 111. Based on information and belief, Aggrieved Employees were not reimbursed for the
9 cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform
10 their assigned job duties and/or for the costs of purchasing and/or maintaining work
11 uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

12 112. Based on information and belief, at times, Aggrieved Employees were not
13 reimbursed for the business use of their personal vehicles, including mileage, wear and tear and/or
14 cost of fuel when they were required to drive around and/or between job sites, and/or otherwise use
15 their personal vehicles in carrying out the duties assigned by DEFENDANTS. As such,
16 DEFENDANTS failed to compensate Aggrieved Employees at the legally mandated Internal
17 Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

18 113. As explained above, based on information and belief, Aggrieved Employees were
19 not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost
20 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
21 protective/safety gear.

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

27 115. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
28 for all reasonable expenses associated with carrying out their duties required that Aggrieved

1 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
2 2802.

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

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

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

26 119. Upon information and belief, DEFENDANTS failed and continue to fail to comply
27 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
28 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick

1 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
2 wages.

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

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

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

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

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

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

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

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

1 of seats would not interfere with the performance of their duties.

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

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

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

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

28 **130. Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every

1 employee who is discharged shall be paid at the place of discharge, and every employee who quits
2 shall be paid at the office or agency of the employer in the county where the employee has been
3 performing labor. All payments shall be made in the manner provided by law.

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

9 132. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

10 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

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

18 135. Violation of Labor Code Section 432.6:

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

23 137. Labor Code Section 432.6(a) provides:

24 138. “[A] person shall not, as a condition of employment, continued employment, or the
25 receipt of any employment-related benefit, require any applicant for employment or any employee
26 to waive any right...”

27 139. Labor Code Section 432.6(b) provides in pertinent part:

28 140. “An employer shall not threaten, retaliate, or discriminate against, or terminate any

1 applicant for employment or any employee because of the refusal to the waiver of any right...”

2 141. Based on information and belief, DEFENDANTS require/required Aggrieved
3 Employees to waive their right to first and/or second meal periods as a condition of working for
4 DEFENDANTS. Based on further information and belief, if/when Aggrieved Employees do not
5 abide by DEFENDANTS’ policies and rules, of which this waiver is included as part of
6 DEFENDANTS’ policies/rules, said Aggrieved Employees are subject to disciplinary action, up to
7 and including termination. As such, DEFENDANTS violated including but not limited to, Labor
8 Code sections 432.6 and/or 432.5 by virtue of including but not limited to, requiring Aggrieved
9 Employees to sign invalid meal period waivers as a condition of employment and/or for threatening,
10 retaliating and/or discriminating against and/or terminating Aggrieved Employees because of their
11 refusal to waive their meal period rights. Based on information and belief, DEFENDANTS ordered
12 unlawful financial credit checks on Aggrieved Employees, in violation of Labor Code section
13 1024.5, and required Aggrieved Employees to provide ongoing written consent to the unlawful
14 credit checks as a condition of employment, in violation of California and Federal law, which results
15 in a further violation of Labor Code section 432.5.

16 142. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
17 condition of employment, DEFENDANTS violated Labor Code section 432.5.

18 Unlawful Inquires into Criminal History

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

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

Unlawful PAGA Waiver

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

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

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

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

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

150. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS

1 engaged in these same herein described unlawful practices, which led to violations of the California
2 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
3 unlawful practices to all of its employees that it applied to PLAINTIFF.

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

9 151. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 **Failure to Keep Accurate Records**

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

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

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

26 ² Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
27 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
28 employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil
penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
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 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

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

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

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

26 158. Based on information and belief, DEFENDANTS fail to timely produce or make
27 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant
28 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject

1 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

2 **Meal Period Violations**

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

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

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

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

26 163. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
27 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
28 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of

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

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

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

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

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

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

24 **Rest Period Violations**

25 169. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
26 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
27 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
28 "insofar as practicable." In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012),

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

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

21 171. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
22 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
23 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
24 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
25 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
26 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

1 employer control during rest periods. Based on further information and belief, Aggrieved
2 Employees were pressured to complete their work duties according to a designated schedule such
3 that rest periods were only taken once tasks were completed, and/or as time permitted.

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

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

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

15 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

6 **Minimum and Overtime Wage Violations**

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

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

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

27 183. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
28 Aggrieved Employees for all hours worked.

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

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

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

18 187. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
19 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
20 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
21 Wage Orders, section 20.

22 **Statutory Wage Violations**

23 188. California Labor Code section 223 makes it unlawful for an employer to secretly pay
24 wages lower than required by statute while purporting to pay legal wages. As described above,
25 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
26 earned minimum and overtime compensation for all hours worked which resulted in the payment of
27 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
28 statutory wages, including, but not limited to, minimum and overtime wages, to which they were

1 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
2 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
3 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
4 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
5 Labor Code § 2699(f)-(g).

6 **Refusal to Make Payment**

7 189. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
8 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
9 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
10 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
11 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
12 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
13 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
14 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

15 **Standard Conditions of Labor Violations**

16 190. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
17 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
18 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
19 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
20 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
21 minimum/overtime wages and other violations described herein result in separate violations of
22 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
23 1197.1 and 2699.

24 **Business Expense Violations**

25 191. California law requires employers to indemnify their employees for all necessary
26

27 ³ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

1 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.”

6 192. 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. To show liability, an employee will only need to show that he or she was
10 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
11 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
12 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
13 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

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

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

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

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

27 197. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
28 full reimbursement for all reasonable expenses associated with carrying out their duties required

1 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
2 expenses in violation of Labor Code section 2802.

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

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

10 **Wage Statement Violations**

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

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

28 202. Moreover, due to violations detailed above, including but not limited to,
39
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

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

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

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

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

27 207. DEFENDANTS' failure to accurately list all hours worked on all wage statements
28 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved

1 Employees over whether they received all wages owed to them.

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

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

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

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

19 212. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
20 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
21 during which the statute provisions were violated. ⁴

22 **Unlawful Deductions**

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

28 ⁴ Labor Code § 226.3 (establishing that the civil penalty is ~~4~~ ¹ per employee per violation").

1 Section 2699.

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

8 **Reporting Time Pay Violations**

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

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

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

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

1 **Seating Violations**

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

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

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

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

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

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

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

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

1 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
2 separate civil penalty.

3 **Sick Leave Violations**

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

11 226. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
12 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
13 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
14 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
15 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

20 228. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
21 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
22 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
23 were entitled to the maximum number of hours accruable.

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

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

2 231. On information and belief, PLAINTIFF alleges that all of these practices were
3 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

19 **Untimely Payment of Final Wages**

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

27 236. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
28 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty

1 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
2 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
3 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also,
4 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

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

11 238. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
12 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
13 256.

14 **Violation of Labor Code Section 208**

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

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

24 **Violation of Labor Code Sections 2100-2112**

25 241. Pursuant to Labor Code Sections 2100-2112, employers with one hundred (100) or
26 more employees at a single warehouse distribution center, or one thousand (1,000) or more
27 employees at one or more warehouse distribution centers in California are required to provide
28 nonexempt employees, upon hire, with a written description of each quota they are subject to (e.g.,

1 quantified number of tasks to be performed or materials to be handled) within a defined period of
2 time and any potential adverse employment action that may result from failure to meet the quota.
3 Labor Code Section 2102 (see below) prohibits adverse employment actions against employees who
4 fail to meet their quota if the quota was not properly disclosed to the employee and prohibits quotas
5 that prevent an employee from taking his or her meal or rest breaks, use of restrooms, or that interfere
6 with compliance with California's occupational health and safety laws.

7 242. Labor Code Section 2101 provides:

8 243. Each employer shall provide to each employee, upon hire, or within 30 days of the
9 effective date of this part, a written description of each quota to which the employee is subject,
10 including the quantified number of tasks to be performed or materials to be produced or handled,
11 within the defined time period, and any potential adverse employment action that could result from
12 failure to meet the quota.

13 244. Labor Code Section 2102 provides:

14 245. An employee shall not be required to meet a quota that prevents compliance with
15 meal or rest periods, use of bathroom facilities, including reasonable travel time to and from
16 bathroom facilities, or occupational health and safety laws in the Labor Code or division standards.
17 An employer shall not take adverse employment action against an employee for failure to meet a
18 quota that does not allow a worker to comply with meal and rest periods, or occupational health and
19 safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been
20 disclosed to the employee pursuant to Section 2101.

21 246. Labor Code Section 2104 provides in pertinent part:

22 247. (a)(1) If a current or former employee believes that meeting a quota caused a
23 violation of their right to a meal or rest period or required them to violate any occupational health
24 and safety laws in the Labor Code or division standards, they have the right to request, and the
25 employer shall provide, a written description of each quota to which the employee is subject and a
26 copy of the most recent 90 days of the employee's own personal work speed data.

27 248. (2) If a former employee requests a written description of the quotas to which they
28 were subject and a copy of their own personal work speed data pursuant to paragraph (1), the

1 employer shall provide 90 days of the former employee's quotas and personal work speed data for
2 the 90 days prior to the date of the employee's separation from the employer.

3 249. (b) An employer that receives a written or oral request for information pursuant to
4 subdivision (a) shall comply with the request as soon as practicable, but no later than 21 calendar
5 days from the date of the request.

6 250. Based on information and belief, during the relevant period, DEFENDANTS
7 employed 100 or more Aggrieved Employees at a single warehouse distribution center and/or
8 employed 1,000 or more Aggrieved Employees at one or more distribution centers in California
9 rendering DEFENDANTS subject to the provisions of Labor Code Sections 2100-2112, during the
10 relevant period.

11 251. Based on information and belief, DEFENDANTS had/have a policy and practice of
12 failing to provide Aggrieved Employees, upon hire, with a written description of each quota they
13 are subject to (e.g., quantified number of tasks to be performed or materials to be handled) within a
14 defined period of time and any potential adverse employment action that may result from failure to
15 meet the quota. Based on further information and belief, DEFENDANTS had/have a policy and
16 practice of subjecting Aggrieved Employees to quotas that prevented those Aggrieved Employees
17 from taking their meal and rest periods and/or using bathroom facilities and/or interfered with
18 compliance of California's occupational health and safety laws.

19 252. Based on further information and belief, DEFENDANTS have/had a policy and
20 practice of subjecting Aggrieved Employees to adverse employment actions for failure to meet a
21 quota that was not disclosed pursuant to Labor Code Section 2101 and/or did not allow them to
22 comply with meal and rest period laws and/or occupational health and safety laws, in violation of
23 Labor Code section 2102.

24 253. Based on information and belief, DEFENDANTS failed and continue to fail to timely
25 produce upon written and/or oral request by current and/or former Aggrieved Employees of the
26 belief that meeting a quota caused a violation of their right to a meal or rest period and/or required
27 them to violate any occupational health and safety laws, a written description of each quota to which
28 the employee is subject and/or a copy of the most recent 90 days of the Aggrieved Employee's own

1 personal work speed data.

2 254. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
3 Code section 2100-2112 as to Aggrieved Employees and are subject to civil penalties.

4 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

5 255. *Unlawful Agreements.* including but not limited to unlawful non-solicitation/non-
6 compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases
7 and/or waivers, including but not limited to, unlawful meal period waivers, unlawful forum selection
8 clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial
9 checks as a condition of obtaining and/or continuing employment in violation of Labor Code section
10 432.5.

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

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

21 **Unlawful Inquires into Criminal History**

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

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

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

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

8 Unlawful PAGA Waiver

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

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

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

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

1 **Violation of Labor Code Section 432.6**

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

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

9 267. Labor Code Section 432.6(b) provides in pertinent part:

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

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

19 270. Under the provisions of PAGA and the above mentioned Labor Code sections,
20 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
21 226.7, 227.3, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 970, 976, 1174,
22 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2100-2112, 2699, 2699.3, 2802, 2810.5 and all
23 applicable Wage Orders as well as all interpretations of these laws by California Courts and
24 administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS
25 are liable for the following penalties:

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

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

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

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

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PRAYER FOR RELIEF

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

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

Dated: May 31, 2024

CROSNER LEGAL, PC

By: 

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JORDAN SMITH