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on behalf of the State of California and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

MARY CRAWFORD, on behalf of the State
of California and all Aggrieved Employees,

Plaintiff,

v.

CAVA GROUP, INC., a Delaware
Corporation; CAVA MEZZE GRILL, LLC,
a Maryland Limited Liability Company; and
DOES 1-100, inclusive,

Defendants.

Case No.: 30-2024-01400813-CU-OE-CXC

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

Assigned for All Purposes
Judge William Claster
Dept. CX101

1 Plaintiff, MARY CRAWFORD, (“PLAINTIFF”), on behalf of the State of California and
2 all Aggrieved Employees (as defined below), hereby files this Complaint against Defendants CAVA
3 GROUP, INC., a Delaware Corporation; CAVA MEZZE GRILL, LLC, a Maryland Limited
4 Liability Company; and DOES 1-100, inclusive, (collectively referred to herein as
5 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

15 3. Venue is proper in this judicial district and the County of Orange pursuant to
16 California Code of Civil Procedure section 395.5 because DEFENDANTS operate locations within
17 this judicial district, including but not limited to, in Anaheim and Laguna Niguel, DEFENDANTS
18 transact business within this judicial district and conduct alleged by PLAINTIFF herein occurred in
19 this this judicial district. *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60
20 Cal.App.5th 1069 (venue in a PAGA action is proper in any county where the defendants committed
21 Labor Code violations against some of its employees). Venue is also proper pursuant to section 393
22 of the California Code of Civil Procedure because the cause, or some part of the cause, arose in the
23 County of Orange.

24 **THE PARTIES**

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

27 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
28 DEFENDANTS as a non-exempt employee with a job title of crew member and/or cook and/or a

1 similar title(s) and/or job position(s) from in or around August 2023 through on or around January
2 15, 2024. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Los Angeles County,
3 California location(s). PLAINTIFF regularly worked at least eight (8) to ten (10) hours per day, at
4 least four (4) to five (5) days per week.

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

8 7. Defendant CAVA MEZZE GRILL, LLC is a Maryland Limited Liability Company
9 that, at all relevant times, was authorized to do business within the State of California and is doing
10 business in the State of California.

11 8. DEFENDANTS own, operate, manage and/or staff its employees to work at the
12 restaurants, stores, facilities and/or other location(s) in California, including but not limited to the
13 at least twenty-five (25) restaurants, stores, and/or other facilities located in including but not limited
14 to, the following cities in California: Anaheim Hills, Chino Hills, Costa Mesa, Culver City, El
15 Segundo, Encinitas, Irvine, La Jolla, Laguna Niguel, Long Beach, Los Angeles, San Diego, Mission
16 Viejo, Pasadena, Rancho Cucamonga, Santa Monica, Sherman Oaks, Woodland Hills, and Whittier.
17 DEFENDANTS, through its various locations, serve the hospitality industry.¹

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

24 10. PLAINTIFF is further informed and believes that, at all relevant times, each
25 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
26 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or

27 _____
28 ¹ See <https://cava.com/locations#CA>. Last visited on May 7, 2024.

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

8 JOINT LIABILITY

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

26 12. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and other
27 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of
28 the Wage Orders, under the alternative definitions of “to employ” adopted by the California

1 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
2 over wages, hours and working conditions of PLAINTIFF and Aggrieved Employees; (2) suffered
3 or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF
4 and Aggrieved Employees to work for them.

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

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

24 15. For example, based on information and belief, DEFENDANTS, and each of them,
25 maintain the same agent for service of process and/or principal place of business as provided to the
26 Secretary of State of the State of Incorporation and/or maintain the same entity headquarters and/or
27 use some of the same attorneys and/or human resources personnel to oversee employment-related
28 matters.

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

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

20 18. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
21 control over, applied the same policies and practices, and engaged in the same acts and omissions
22 with regard to the other Aggrieved Employees.

23 19. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS must
24 be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under
25 PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform
26 services from which they benefited, and furthermore that the aforementioned entities had the right
27 to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant
28 times herein, so as to be considered the joint employers of PLAINTIFF.

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

PAGA ALLEGATIONS

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

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

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

COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS

23. PLAINTIFF, on March 1, 2024, through counsel, gave written notice by online filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via

certified mail.

24. The PAGA Notice outlined PLAINTIFF's claims for violations of the California Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved Employees.

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

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

FACTUAL ALLEGATIONS

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

28. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title of crew member and/or cook and/or a similar title(s) and/or job position(s) from in or around August 2023 through on or around January 15, 2024. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Los Angeles County, California location(s). PLAINTIFF regularly worked at least eight (8) to ten (10) hours per day, at least four (4) to five (5) days per week.

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

30. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved

1 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
2 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
3 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
4 below.

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

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

15 33. For example, as explained above, based on information and belief, DEFENDANTS
16 would unlawfully edit the clock in and out times for PLAINTIFF's and other NON-EXEMPT
17 AGGRIEVED EMPLOYEES' meal periods in order to display at least a thirty minute off-duty meal
18 period during most if not all shifts worked, notwithstanding the fact that DEFENDANTS had actual
19 and/or constructive knowledge that DEFENDANTS had required PLAINTIFF and other NON-
20 EXEMPT AGGRIEVED EMPLOYEES' to perform work-related tasks during their meal periods.

21 34. Based on information and belief, DEFENDANTS required NON-EXEMPT
22 AGGRIEVED EMPLOYEES to be at their assigned workstations at the start of a scheduled shift,
23 thereby forcing NON-EXEMPT AGGRIEVED EMPLOYEES to gather work-related equipment
24 and/or safety gear, make any necessary adjustments to tools/equipment and/or perform
25 maintenance/cleaning tasks, don work clothing/uniforms and/or protective equipment, and/or
26 complete other work tasks prior to their scheduled shift and/or prior to clocking in/signing in,
27 thereby resulting in pre-shift off-the-clock work.

28 35. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES
9
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1 were required to complete other off-the-clock work tasks after clocking out for the end of their shifts
2 and/or during uncompensated meal periods, resulting in off-the-clock work and the underpayment
3 of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

4 36. For example, based on information and belief, DEFENDANTS required NON-
5 EXEMPT AGGRIEVED EMPLOYEES to clock out for the end of their shifts but to continue
6 working due to the need to return/maintain tools, clean and/or organize their work stations/areas,
7 provide shift status updates and/or debriefings and/or participate in work meetings, respond to work-
8 related communications and/or perform other work tasks off-the-clock, resulting in the
9 underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED
10 EMPLOYEES.

11 37. For example, PLAINTIFF was frequently required to clock out for the end of her
12 shifts but to continue working off the clock due the need to complete assigned job duties, including
13 but not limited to, cleaning her workspace and/or completing other off-the-clock work tasks,
14 resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the
15 underpayment of wages owed to PLAINTIFF.

16 38. Based on information and belief, DEFENDANTS did not compensate NON-
17 EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective
18 equipment and/or uniforms (e.g., rubber gloves, hairnets, aprons, hats, and/or face masks) during
19 meal periods, before the start of a scheduled shift, and/or after completing a scheduled shift,
20 resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

21 39. Based on information and belief, at times, NON-EXEMPT AGGRIEVED
22 EMPLOYEES were required to complete off-the-clock work outside of scheduled shifts due to
23 work-related phone calls and/or messages they received to their phones/mobile devices and were
24 required to respond to, including but not limited to, communications from supervisors regarding
25 scheduling and/or other work tasks, resulting in the underpayment of wages owed to NON-
26 EXEMPT AGGRIEVED EMPLOYEES.

27 40. PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were required
28 to perform other off-the-clock work for which they were not compensated.

1 41. For example, based on information and belief, at times, DEFENDANTS'
2 biometric/electronic employee time-keeping system malfunctioned such that NON-EXEMPT
3 AGGRIEVED EMPLOYEES were required to either reinitiate and/or otherwise troubleshoot the
4 system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts
5 and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of
6 wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief,
7 NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for
8 shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not
9 recorded and not compensated and resulted in unpaid minimum wages owed to NON-EXEMPT
10 AGGRIEVED EMPLOYEES.

11 42. Moreover, based on information and belief, NON-EXEMPT AGGRIEVED
12 EMPLOYEES who opened their work locations were required to first unlock the doors, turn on all
13 the lights in the restaurant/facility and/or deactivate the alarm before clocking in for work, resulting
14 in pre-shift off-the-clock work and the underpayment of wages owed to NON-EXEMPT
15 AGGRIEVED EMPLOYEES. Based on further information and belief, NON-EXEMPT
16 AGGRIEVED EMPLOYEES in charge of closing their location(s) were required to first clock out
17 for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the
18 doors. This resulted in additional off-the-clock post-shift work that was not compensated and the
19 underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

20 43. Based on information and belief, DEFENDANTS required NON-EXEMPT
21 AGGRIEVED EMPLOYEES to undergo COVID-19 temperature screenings and/or complete
22 questionnaires prior to beginning their scheduled shift and/or prior to clocking/signing in, thereby,
23 resulting in pre-shift off-the-clock work.

24 44. Based on information and belief, at times, DEFENDANTS require/required NON-
25 EXEMPT AGGRIEVED EMPLOYEES to travel between DEFENDANTS' restaurants, facilities
26 and/or locations without compensating NON-EXEMPT AGGRIEVED EMPLOYEES for the travel
27 time.

28 45. For example, based on information and belief, due to scheduling issues and/or

1 understaffing, NON-EXEMPT AGGRIEVED EMPLOYEES were at times required after working
2 at their scheduled facility location to cover a shift at another of DEFENDANTS'
3 restaurants/facilities/locations but were not compensated for the time spent driving to the second
4 restaurant/facility, resulting in the underpayment of minimum and overtime wages owed to NON-
5 EXEMPT AGGRIEVED EMPLOYEES.

6 46. Based on information and belief, DEFENDANTS failed to compensate NON-
7 EXEMPT AGGRIEVED EMPLOYEES for all time spent completing DEFENDANTS' required
8 trainings and/or courses (e.g., food safety and/or food handler courses) and/or testings and/or
9 certifications (e.g., food handler certifications).

10 47. Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT
11 AGGRIEVED EMPLOYEES the applicable minimum wage for the county and/or city within which
12 the NON-EXEMPT AGGRIEVED EMPLOYEE worked in California.

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

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

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

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

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

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

27 53. Based on information and belief, DEFENDANTS failed and continue to fail to pay
28 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours

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

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

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

17 56. For example, based on information and belief, NON-EXEMPT AGGRIEVED
18 EMPLOYEES were forced to take late meal periods in order to complete assigned job duties. Based
19 on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times interrupted
20 during purported meal periods and/or had meal periods cut short and/or restricted to
21 DEFENDANTS' premises due to the need to continue assigned job duties.

22 57. For example, PLAINTIFF was frequently required to cut her meal periods short
23 and/or take interrupted meal periods due to the need to complete assigned job duties.

24 58. For example, PLAINTIFF was frequently required to clock out and continue working
25 and/or cut her meal periods short due to including but not limited to, understaffing and/or when the
26 restaurant was busy. Also, PLAINTIFF was often forced to take her meal period late (i.e. after
27 working more than five (5) hours) due to the need to complete assigned job duties.

28 59. Based on information and belief, other Aggrieved Employees were consistently

1 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
2 interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing,
3 the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and
4 expectations.

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

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

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

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

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

24 65. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
25 records of the true start and end times of PLAINTIFF's and Aggrieved Employees' meal periods.
26 Based on information and belief, to the extent meal periods were recorded, DEFENDANTS illegally
27 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other
28 Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal

1 periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

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

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

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

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

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

24 71. For example, based on information and belief, NON-EXEMPT AGGRIEVED
25 EMPLOYEEES were at times, unable to take compliant rest periods due to their need to complete
26 assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area
27 and/or had purported rest periods restricted to DEFENDANTS' premises.

28 72. For example, per DEFENDANTS' unlawful rest period policies and practices,

1 PLAINTIFF was only afforded a single rest period of twenty minutes in length per shift regardless
2 of the total number of hours worked in a shift, and PLAINTIFF was frequently required to work
3 through her single rest period due to the need to complete assigned job duties.

4 73. For example, PLAINTIFF was often required to work through her single rest period
5 when the restaurant was busy.

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

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

12 76. Based on information and belief, DEFENDANTS implemented policies and/or
13 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
14 DEFENDANTS' control during rest periods.

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

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

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

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

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

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

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

23 84. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
24 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
25 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
26 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
27 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
28 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or

1 other off-the-clock work policies and practices described above) which results in a violation of
2 Labor Code section 226(a).

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

6 86. For example, based on information and belief, DEFENDANTS issued wage
7 statements to Aggrieved Employees that fail to accurately list all deductions, in violation of Labor
8 Code section 226(a)(4).

9 87. Based on information and belief, wage statements issued by DEFENDANTS failed
10 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid. For
11 example, based on information and belief, at times, DEFENDANTS issued wage statements to
12 Aggrieved Employees containing payment for hours worked during previous pay periods, yet
13 DEFENDANTS' wage statements do not include the inclusive dates of the accurate pay period for
14 that retroactive pay, further failing to list the total hours worked for the pay period, including but
15 not limited to, the total hours worked for the pay period the retroactive pay corresponds with, in
16 violation of Labor Code section 226(a)(6) and/or Labor Code section 226(a)(2).

17 88. For example, based on information and belief, at times, DEFENDANTS issued wage
18 statement(s) to Aggrieved Employees that list a category for "Retro" pay without including the
19 inclusive dates of the accurate pay period for that "Retro" pay, further failing to list the total hours
20 worked for the pay period, including but not limited to, the total hours worked for the pay period
21 the retroactive pay corresponds with, in violation of including but not limited to, Labor Code section
22 226(a)(2) and/or Labor Code section 226(a)(6).

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

27 90. For example, based on information and belief, wage statements issued by
28 DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee, in violation of Labor
2 Code section 226(a)(9) due to DEFENDANTS' failure to list an overtime rate category at all and/or
3 failure to list a category containing the proper overtime rate.

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

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

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

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

17 95. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
18 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
19 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
20 from Aggrieved Employees paychecks during the relevant period including without limitation,
21 deducting business costs and/or deducting wages for purported overpayments from previous pay
22 periods and/or unlawfully deducting wages for negligently damaged property and/or unlawfully
23 deducting transaction fees/pay/money card fees and/or deducting costs advanced by
24 DEFENDANTS. Such a practice is in violation of including but not limited to, Labor Code Sections
25 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

26 96. **Failure to Produce Employment Records.** Based on information and belief,
27 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
28 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code

1 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
2 counsel, sent a written request for payroll and personnel records to DEFENDANTS, on or around
3 including but not limited to the following date(s): March 1, 2024. Yet, DEFENDANTS failed to
4 timely produce complete records, including but not limited to, PLAINTIFF's time records and/or
5 personnel file and/or wage statements, within the time periods delineated by California labor law.
6 Based on information and belief, DEFENDANTS failed and continues to fail to timely produce
7 complete payroll and personnel records when requested by other Aggrieved Employees. Based on
8 information and belief, DEFENDANTS failed and continue to fail to timely produce complete time,
9 pay, and personnel records when requested by other Aggrieved Employees.

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

18 98. DEFENDANTS have failed and continue to fail to keep accurate and complete
19 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
20 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
21 employer control during unpaid meal periods, failure to record the true start and end times of meal
22 periods, shift start times and shift end times, and other off-the-clock work policies and practices
23 described herein.

24 99. **Unreimbursed Business Expenses.** Based on information and belief,
25 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
26 as a direct consequence of the performance of their job duties without providing reimbursement, in
27 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
28 Aggrieved Employees were improperly required to provide and maintain work tools that are

1 supposed to be the responsibility of the employer.

2 100. Based on information and belief, DEFENDANTS shifted the costs of doing business
3 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
4 to, uniforms/work clothing/work shoes, personal protective/safety gear and/or the use of Aggrieved
5 Employees' personal mobile phone and data usage for work-related purposes including but not
6 limited to receiving and responding to work-related messages and/or phone calls.

7 101. For example, on information and belief, Aggrieved Employees received
8 calls/messages to their personal cell phones/mobile devices from supervisors and/or other
9 employees regarding scheduling and/or other work tasks but were not provided any and/or full
10 reimbursement from DEFENDANTS for this personal cell phone use.

11 102. For example, PLAINTIFF frequently received calls/messages to her personal cell
12 phone/mobile device from supervisors and/or other employees regarding scheduling and/or other
13 work tasks but were not provided any and/or full reimbursement from DEFENDANTS for this
14 personal cell phone use.

15 103. Based on information and belief, Aggrieved Employees were not reimbursed for the
16 cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or
17 maintaining work uniforms/work clothing/work shoes, personal protective/safety gear and/or work
18 tools (e.g., hand tools) and/or equipment required to carry out their assigned job duties.

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

23 105. For example, PLAINTIFF was required to purchase non-slip shoes and/or other
24 uniforms, work clothing, work shoes and/or protective and/or safety gear, however, DEFENDANTS
25 failed to provide PLAINTIFF with any and/or full reimbursement for the business expenses
26 PLAINTIFF incurred in connection with being required to purchase and/or maintain
27 DEFENDANTS required uniforms, work clothing, work shoes and/or protective and/or safety gear.

28 106. Based on information and belief, at times, DEFENDANTS required Aggrieved

1 Employees to use their personal vehicles for work without reimbursing them for the personal vehicle
2 expenses they incurred in connection therewith.

3 107. For example, based on information and belief, at times, DEFENDANTS required
4 Aggrieved Employees to travel from one of DEFENDANTS' facilities/restaurants to a second of
5 DEFENDANTS' facilities/restaurants for work and/or otherwise required Aggrieved Employees to
6 use their personal vehicles to carry out their assigned job duties without reimbursing Aggrieved
7 Employees for the expenses incurred in connection with DEFENDANTS' business use of their
8 personal vehicles. As such, DEFENDANTS failed to compensate Aggrieved Employees at the
9 legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the
10 relevant period.

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

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

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

24 111. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
25 provides as follows:

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

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

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

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

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

26 116. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
27 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
28 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,

1 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
2 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
3 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
4 used sick leave and the balance of paid sick leave.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 129. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
12 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
13 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
14 failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of
15 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

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

21 131. Upon separation of employment, Aggrieved Employees' final paychecks were not
22 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
23 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
24 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
25 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
26 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate
27 including non-discretionary compensation, including but not limited to, shift differentials).

28 132. Based on further information and belief, DEFENDANTS failed to timely provide all

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

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

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

17 **135. Unlawful Agreements-Unlawful Criminal History Inquiries.**

18 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

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

26 **137.** Labor Code section 432.6(a), provides that "a person shall not, as a condition of
27 employment, continued employment, or the receipt of any employment-related benefit, require any
28 applicant for employment or any employee to waive any right..."Based on information and belief,

1 DEFENDANTS required Aggrieved Employees to sign meal period waivers that were universally
2 signed as a condition of employment, including but not limited to, during the onboarding process.
3 By requiring Aggrieved Employees to sign unlawful meal period waivers as a condition of obtaining
4 and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these
5 invalid waivers are otherwise unlawful under Labor Code section 432.6.

6 138. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
7 condition of employment, DEFENDANTS violated Labor Code section 432.5.

8 Unlawful Inquires into Criminal History

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

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

18 Unlawful PAGA Waiver

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

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

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

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

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

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

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

21
22 **FIRST CAUSE OF ACTION**
23 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
24 **2698, ET SEQ.**
25 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
26 **Defendants)**

27 147. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

28 **Failure to Keep Accurate Records**

148. California Labor Code § 1174 requires employers to keep "accurate and complete"
payroll records showing, among other things, the hours worked daily by all non-exempt employees.

1 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
2 times during which all owed meal periods were provided each day.

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

8 150. DEFENDANTS' failure to keep "accurate and complete" payroll records for
9 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
10 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
11 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
12 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
13 period during which the referenced statutes and Wage Order provisions were violated.²

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

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

21 152. Section (b) of Labor Code section 226 further requires employers to "afford current
22 and former employees the right to inspect or receive a copy of records pertaining to their
23 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
24 provides that, "an employer who receives a written or oral request to inspect or receive a copy of

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

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

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

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

19 **Meal Period Violations**

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

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

28 157. Employers covered by any and all applicable IWC Wage Orders have an obligation

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

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

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

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

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

27 162. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
28 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and

1 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
2 violation of California's meal period laws.

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

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

13 **Rest Period Violations**

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

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

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

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

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

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

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

4 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

23 **Minimum and Overtime Wage Violations**

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

1 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
2 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

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

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

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

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

28 182. Based on information and belief, DEFENDANTS further violated California's

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

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

11 **Statutory Wage Violations**

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

23 **Refusal to Make Payment**

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

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

4 **Standard Conditions of Labor Violations**

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

13 **Business Expense Violations**

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

20 188. Among other things, under California law, when employees must use their personal
21 cellphones for work-related purposes, the employer must reimburse them for a reasonable
22 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228
23 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
24 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
25 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile

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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 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
2 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

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

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

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

13 192. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
14 Employees have suffered injury in that they were not completely reimbursed as mandated by
15 California law.

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

20 194. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved
21 Employees have suffered injury in that they were not completely reimbursed as mandated by
22 California law.

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

27 **Wage Statement Violations**

28 196. California law requires every employer semi-monthly or at the time of each payment
40
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1 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
2 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
3 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
5 is paid; (7) the name of the employee and only the last four digits of his or her social security number
6 or an employee identification number other than a social security number; (8) the name and address
7 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
8 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

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

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

27 199. As explained above, wage statements issued by DEFENDANTS failed to list the
28 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,

1 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
2 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
3 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
4 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
5 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

14 202. Based on information and belief, wage statements issued by DEFENDANTS failed
15 to list the inclusive dates of the pay period for which the Class Member is being paid.

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

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

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

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

27 207. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
28 Employees have suffered injury. The absence of accurate information on their wage statements has

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

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

11 **Unlawful Deductions**

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

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

24 **Reporting Time Pay Violations**

25 211. Section 5 of all applicable IWC Wage Orders, provides as follows:

26 212. (A) Each workday an employee is required to report for work and does report, but is
27 not put to work or is furnished less than half said employee's usual or scheduled day's work, the

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

1 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
2 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less
3 than the minimum wage. (B) If an employee is required to report for work a second time in any one
4 workday and is furnished less than two (2) hours of work on the second reporting said employee
5 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
6 minimum wage.

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

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

18 **Seating Violations**

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

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

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

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

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

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

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

14 220. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
15 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
16 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
17 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
18 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
19 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
20 Aggrieved Employee, results in a separate civil penalty.

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

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

27 222. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
28 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its

1 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
2 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
3 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
4 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
5 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
6 Labor Code section 351.

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

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

17 **Sick Leave Violations**

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

25 226. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
26 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
27 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
28 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and

1 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

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

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

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

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

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

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

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

28 234. Based on information and belief, DEFENDANTS had and continue to have a
47
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
2 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
3 to Aggrieved Employees upon separation of employment, in violation of California law, including
4 but not limited to, Labor Code section 227.3.

5 **Untimely Payment of Final Wages**

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

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

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

25 238. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
26 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
27 256.

1 **Violation of Labor Code Section 208**

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

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

11 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

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

18 242. The California Labor Code places certain procedural and substantive limits on an
19 employers’ ability to conduct employee background checks and on how employers can use the
20 information they obtain through those background checks. Labor Code section 1024.5 states that
21 employers, except for financial institutions, may order a credit check only if the individual works
22 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
23 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
24 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
25 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
26 background check, including but not limited to identifying an appropriate reason for the background
27 check, a separate consent form with required disclosures and certain formatting requirements,
28 additional forms such as a summary of rights, a way by which to request a copy of the report, as

1 well as proper notice of adverse actions taken, among other statutory requirements.

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

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

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

14 246. Based on further information and belief, DEFENDANTS knew that requiring
15 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
16 condition of obtaining and/or holding employment was unlawful.

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

19 Unlawful Inquires into Criminal History

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

1 employment in violation of Labor Code section 432.5.

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

10 70. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
11 condition of employment, DEFENDANTS violated Labor Code section 432.5.

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

14 Unlawful Inquires into Criminal History

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

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

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

1 Unlawful PAGA Waiver

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

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

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

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

21 79. Under the provisions of PAGA and the above mentioned Labor Code sections,
22 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
23 226.7, 227.3, 245-248.6, 256, 351, 353, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194,
24 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as
25 well as all interpretations of these laws by California Courts and administrative bodies, as well as
26 any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
27 penalties:

28 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the

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

9 248. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
10 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 20, 2024

CROSNER LEGAL, PC

By: 

Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff
MARY CRAWFORD