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on behalf of the State of California and all Aggrieved Employees

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 DORIAN JEFFCOAT, on behalf of the State
12 of California and all Aggrieved Employees,

13 Plaintiff,

14 v.

15
16 SIDECAR DOUGHNUTS LLC, a
California Limited Liability Company; and
17 DOES 1-100, inclusive,

18 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
8/12/2024 4:05:50 PM

Clerk of the Superior Court
By I. Quirarte ,Deputy Clerk

Case No.: 24CU005608C

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

1 Plaintiff, DORIAN JEFFCOAT, (“PLAINTIFF”), on behalf of the State of California and
2 all Aggrieved Employees (as defined below, hereby files this Complaint against Defendants
3 SIDECAR DOUGHNUTS LLC, a California Limited Liability Company; and DOES 1-100,
4 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
5 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 San Diego pursuant to
16 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within
17 this judicial district, DEFENDANTS employed PLAINTIFF to work in this judicial district, and
18 conduct alleged by PLAINTIFF herein occurred in this judicial district. *See also Crestwood*
19 *Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is
20 proper in any county where the defendants committed Labor Code violations against some of its
21 employees). Venue is also proper pursuant to section 393 of the California Code of Civil Procedure
22 because the cause, or some part of the cause, arose in the County of San Diego.

23 **THE PARTIES**

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

26 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
27 DEFENDANTS as a non-exempt employee with a job title(s) of Skill 5 Associate and/or a similar
28 title(s) and/or job position(s) from in or around August 2023 through in or around the end of January

1 2024. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Del Mar, California location(s).
2 PLAINTIFF regularly worked at least six (6) to ten (10) hours per day. DEFENDANTS paid
3 PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked. PLAINTIFF also
4 earned tips as part of his compensation. Based on information and belief, DEFENDANTS also
5 compensated Aggrieved Employees with non-discretionary compensation, including without
6 limitation, non-discretionary bonuses / incentive pay, shift differential pay and/or other non-
7 discretionary compensation.

8 6. Defendant SIDECAR DOUGHNUTS LLC is a California Limited Liability
9 Company that, at all relevant times, was authorized to do business within the State of California and
10 is doing business in the State of California.

11 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
12 stores, shops, restaurants, facilities and/or other location(s) in California, including but not limited
13 to the stores, shops, restaurants, facilities in Manhattan Beach, Costa Mesa, Santa Monica, Torrance,
14 Culver City, Los Angeles, and Del Mar, California. DEFENDANTS operate under including but
15 not limited to, the name(s) "Sidecar Doughnuts" and/or "Sidecar Doughnuts & Coffee."
16 DEFENDANTS, through its various locations, serve the restaurant and/or food services industry.¹

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

23 9. PLAINTIFF is further informed and believes that, at all relevant times, each
24 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
25 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
26 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
27 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all

28 ¹ See <https://sidecardoughnuts.com/locations/>. Last visited on August 6, 2024.

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

6 **JOINT LIABILITY**

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

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

1 or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF
2 and Aggrieved Employees to work for them.

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

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

22 14. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
23 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
24 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
25 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
26 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
27 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively
28 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of

1 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
2 and other Aggrieved Employees' employment with or without cause. Upon information and belief,
3 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
4 writing the details of their compensation, and the manner in which they were to take meal and rest
5 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
6 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
7 collectively would evaluate their wage rates.

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

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

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

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

25 **PAGA ALLEGATIONS**

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

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

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

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

18 21. PLAINTIFF, on April 12, 2024, through counsel, gave written notice by online filing
19 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
20 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
21 in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via
22 certified mail.

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

26 23. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
27 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
28 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.

1 PLAINTIFF has exhausted the administrative remedies as required by Labor Code section 2699.3.
2 Consequently, PLAINTIFF's right to file the instant lawsuit has duly accrued.

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

6 **FACTUAL ALLEGATIONS**

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

11 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
12 DEFENDANTS as a non-exempt employee with a job title(s) of Skill 5 Associate and/or a similar
13 title(s) and/or job position(s) from in or around August 2023 through in or around the end of January
14 2024.

15 27. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Del Mar, California
16 location(s). PLAINTIFF regularly worked at least six (6) to ten (10) hours per day.

17 28. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
18 DEFENDANTS as hours worked. PLAINTIFF also earned tips as part of his compensation.

19 29. Based on information and belief, DEFENDANTS also compensated Aggrieved
20 Employees with non-discretionary compensation, including without limitation, non-discretionary
21 bonuses / incentive pay, shift differential pay and/or other non-discretionary compensation.

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

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

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

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

16 34. For example, PLAINTIFF was frequently required to respond to work-related calls
17 and/or messages prior to clocking in for the start of his shift and/or after clocking out for the end of
18 his shift and/or during unpaid meal periods and/or otherwise outside of scheduled shift times,
19 resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the
20 underpayment of wages owed to PLAINTIFF.

21 35. Based on information and belief, DEFENDANTS did not compensate Aggrieved
22 Employees for time spent donning and doffing personal protective equipment and/or uniforms (e.g.,
23 rubber gloves, hairnets, aprons, hats, and/or face masks) during meal periods, before the start of a
24 scheduled shift, and/or after completing a scheduled shift, resulting in the underpayment of wages
25 owed to Aggrieved Employees. PLAINTIFF and other Aggrieved Employees were required to
26 perform other off-the-clock work for which they were not compensated.

27 36. For example, based on information and belief, at times, DEFENDANTS'
28 biometric/electronic/POS employee time-keeping system malfunctioned such that Aggrieved

1 Employees were required to either reinitiate and/or otherwise troubleshoot the system prior to being
2 able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in
3 from meal periods, resulting in off-the-clock work and the underpayment of wages owed to
4 Aggrieved Employees.

5 37. Based on information and belief, Aggrieved Employees experienced the same issues
6 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
7 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
8 Aggrieved Employees.

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

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

20 40. Based on information and belief, at times, DEFENDANTS require/required
21 Aggrieved Employees to travel between DEFENDANTS' restaurants, stores, shops, facilities and/or
22 locations without compensating Aggrieved Employees for the travel time.

23 41. For example, based on information and belief, due to scheduling issues and/or
24 understaffing, Aggrieved Employees were at times required after working at their scheduled facility
25 location to cover a shift at another of DEFENDANTS' restaurants/facilities/locations but were not
26 compensated for the time spent driving to the second restaurant/facility, resulting in the
27 underpayment of minimum and overtime wages owed to Aggrieved Employees. Based on
28 information and belief, DEFENDANTS failed to pay Aggrieved Employees the applicable

1 minimum wage for the county and/or city within which the Aggrieved Employee worked in
2 California.

3 42. Moreover, based on information and belief, DEFENDANTS failed to pay
4 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split
5 shifts during the relevant period. For example, based on information and belief, at times,
6 DEFENDANTS required PLAINTIFF and/or other Aggrieved Employees to work two separate
7 shifts in the same day. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF
8 and/or other Aggrieved Employees split shift compensation whenever PLAINTIFF's and/or other
9 Aggrieved Employees' work schedules were interrupted by non-paid non-working periods
10 established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See
11 section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay
12 at the minimum wage shall be paid in addition to the minimum wage for that workday...). See, also,
13 Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the
14 minimum wage shall be paid in addition to the minimum wage for that workday, except when the
15 employee resides at the place of employment). DEFENDANTS also failed to separately itemize
16 these split shift premium wages on PLAINTIFF's and/or other Aggrieved Employees' wage
17 statements, in violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders.
18 See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium
19 payment on the pay stub provided to the employee, and it should be shown as a separate category
20 such as "Split Shift Premium" and should not be lumped into another category such as wages, bonus,
21 etc. DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF
22 and/or other Aggrieved Employees on their wage statements.

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

28 44. Based in information and belief, DEFENDANTS implemented a time-rounding
11
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
2 compensable time because the time-rounding system implemented by DEFENDANTS would
3 almost always, if not always, result in understating actual compensable work time.

4 45. For example, as explained herein, DEFENDANTS issued wage statements to
5 PLAINTIFF that demonstrate DEFENDANTS rounded Aggrieved Employees' total hours worked
6 to at least the nearest tenth, quarter, half and/or whole hour during various, if not all pay periods,
7 resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the
8 underpayment of wages owed to PLAINTIFF.

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

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

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

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

1 above the California minimum wage rate.

2 50. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF and
3 other Aggrieved Employees all owed overtime wages due to DEFENDANTS' policy and practice
4 of scheduling PLAINTIFF and other Aggrieved Employees for split shifts and thus only paying
5 premium wages, if at all, for time worked beyond eight (8) hours in a shift while failing to pay all
6 premium wages for all time worked beyond eight (8) hours in a workday, resulting in denied
7 overtime wages owed to PLAINTIFF and other Aggrieved Employees.

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

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

22 53. For example, based on information and belief, Aggrieved Employees were forced to
23 take late meal periods in order to complete assigned job duties. Based on information and belief,
24 Aggrieved Employees were at times interrupted during purported meal periods and/or had meal
25 periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned
26 job duties.

27 54. Based on information and belief, other Aggrieved Employees were consistently
28 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods

1 interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing,
2 the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and
3 expectations.

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

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

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

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

19 59. For example, when PLAINTIFF worked more than ten (10) and/or twelve (12) hours
20 in a shift, PLAINTIFF was usually not provided with a compliant second meal period.

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

25 61. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
26 records of the true start and end times of PLAINTIFF's and Aggrieved Employees' meal periods.
27 Based on information and belief, to the extent meal periods were recorded, DEFENDANTS illegally
28 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other

1 Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal
2 periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

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

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

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

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

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

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

1 68. Based on information and belief, DEFENDANTS did not have a lawful policy,
2 instruction, or practice as to the taking, timing, or duty-free nature of rest periods. For example,
3 based on information and belief, DEFENDANTS failed to authorize and permit rest periods that
4 were a “net” ten minutes in a suitable rest area, and instead, to the extent rest periods were provided,
5 DEFENDANTS limited PLAINTIFF and other Aggrieved Employees to only ten-minute rest
6 periods, requiring them to be back at their workstations within ten minutes of leaving their work
7 stations , in violation of California rest period law.

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

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

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

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

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

27 74. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC
28 Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the

1 Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the
2 toilet rooms and shall be available to employees during work hours.”

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

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

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

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

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

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

5 80. Based on information and belief, wage statements issued by DEFENDANTS failed
6 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid,in
7 violation of including but not limited to, Labor Code section 226(a)(2) and/or Labor Code section
8 226(a)(6). For example, based on information and belief, at times, DEFENDANTS issued wage
9 statements to Aggrieved Employees containing payment for hours worked during previous pay
10 periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate
11 pay period for that retroactive pay, further failing to list the total hours worked for the pay period,
12 including but not limited to, the total hours worked for the pay period the retroactive pay corresponds
13 with.

14 81. Based on information and belief, DEFENDANTS issued wage statements to
15 Aggrieved Employees that fail to accurately list all deductions, in violation of Labor Code section
16 226(a)(4).

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

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

25 84. DEFENDANTS provided inaccurate wage statements that list a "Cumulative Rate"
26 in dollars but fail to list the corresponding hours/units and fail to include the "Cumulative Rate" in
27 the total gross and net wages earned for the pay period(s), in violation of including but not limited
28 to, Labor Code sections 226(a)(1), 226(a)(5) and/or 226(a)(9).

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

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

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

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

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

23 90. Based on information and belief, DEFENDANTS charge an additional service
24 charge to their customers/patrons. Customers are led to believe that the service charge will be paid
25 to DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keeps a majority (if not the
26 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
27 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. See O'Grady v
28 Merchant Exchanges Production, Inc., 41 Cal.App.5th 771, 790 (a mandatory service charge can

1 constitute a gratuity that is intended to the employees providing the service).

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

5 92. **Denied Predictability Pay.** Based on information and belief, Aggrieved Employees
6 worked at least two (2) hours in a particular week for DEFENDANTS at DEFENDANTS'
7 location(s) operating within the City of Los Angeles. Based on further information and belief,
8 DEFENDANTS implemented changes to Aggrieved Employees' work schedules without
9 complying with the requirements of the City of Los Angeles Fair Work Week Ordinance and without
10 paying all owed predictability pay to Aggrieved Employees.

11 93. For example, based on information and belief, DEFENDANTS made changes to
12 Aggrieved Employees' work schedules less than fourteen (14) days before the start of the work
13 period, however, DEFENDANTS failed to pay these Aggrieved Employees with all owed
14 predictability pay wages, in violation of including but not limited to, the City of Los Angeles Fair
15 Work Week Ordinance. See Los Angeles Municipal Code Chapter XVIII Art. 5 Sec. 185 and Art.
16 8 Sec. 188.

17 94. Based on information and belief, DEFENDANTS further failed to provide each new
18 Aggrieved Employee with a written Good Faith Estimate of Employee's Work Schedule before
19 hiring, further failing to provide a written Good Faith Estimate within ten (10) days of Aggrieved
20 Employees' respective requests for the estimate. Based on further information and belief,
21 DEFENDANTS failed to provide Aggrieved Employees with written notice of their work schedules
22 at least fourteen (14) calendar days before the start of the work period.

23 95. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
24 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
25 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
26 from Aggrieved Employees paychecks during the relevant period including without limitation,
27 deducting business costs and/or deducting wages for purported overpayments from previous pay
28 periods and/or unlawfully ducting wages for negligently damaged property and/or unlawfully

1 deducting transaction fees/pay/money card fees and/or deducting costs advanced by
2 DEFENDANTS. Such a practice is in violation of including but not limited to, Labor Code Sections
3 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

12 97. DEFENDANTS have failed and continue to fail to keep accurate and complete
13 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
14 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
15 employer control during unpaid meal periods, failure to record the true start and end times of meal
16 periods, shift start times and shift end times, and other off-the-clock work policies and practices
17 described herein.

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

24 99. Based on information and belief, DEFENDANTS shifted the costs of doing business
25 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
26 to, uniforms/work clothing/work shoes, personal protective/safety gear and/or the use of Aggrieved
27 Employees' personal mobile phone and data usage for work-related purposes including but not
28 limited to receiving and responding to work-related messages and/or phone calls. For example, on

1 information and belief, Aggrieved Employees received calls/messages to their personal cell
2 phones/mobile devices from supervisors and/or other employees regarding scheduling and/or other
3 work tasks but were not provided any and/or full reimbursement from DEFENDANTS for this
4 personal cell phone use.

5 100. For example, DEFENDANTS required PLAINTIFF to use his personal cell phone /
6 mobile device for work, including but not limited to, to receive and/or send text messages regarding
7 including but not limited to work scheduling and/or other work-related matters, however,
8 DEFENDANTS failed to reimburse PLAINTIFF at all and/or in full for the business expenses
9 PLAINTIFF incurred in connection with being required to use his personal cell phone/mobile device
10 for work, including but not limited to, increased data plan charges.

11 101. Based on information and belief, Aggrieved Employees were not reimbursed for the
12 cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or
13 maintaining work uniforms/work clothing/work shoes, personal protective/safety gear and/or work
14 tools (e.g., hand tools) and/or equipment required to carry out their assigned job duties. For
15 example, based on information and belief, Aggrieved Employees were not reimbursed for the costs
16 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
17 protective/safety gear, such as, but not limited to, face masks, gloves, hairnets and/or work shoes.

18 102. Based on information and belief, at times, DEFENDANTS required Aggrieved
19 Employees to use their personal vehicles for work without reimbursing them for the personal vehicle
20 expenses they incurred in connection therewith. For example, based on information and belief, at
21 times, DEFENDANTS required Aggrieved Employees to travel from one of DEFENDANTS'
22 facilities/restaurants to a second of DEFENDANTS' facilities/restaurants for work and/or otherwise
23 required Aggrieved Employees to use their personal vehicles to carry out their assigned job duties
24 without reimbursing Aggrieved Employees for the expenses incurred in connection with
25 DEFENDANTS' business use of their personal vehicles.

26 103. As such, DEFENDANTS failed to compensate Aggrieved Employees at the legally
27 mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant
28 period.

1 104. As explained above, based on information and belief, Aggrieved Employees were
2 not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost
3 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
4 protective/safety gear.

5 105. Based on information and belief, Aggrieved Employees were improperly required to
6 pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

7 106. Based on information and belief, DEFENDANTS regularly failed to reimburse and
8 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
9 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
10 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
11 assigned by DEFENDANTS.

12 107. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
13 for all reasonable expenses associated with carrying out their duties required that Aggrieved
14 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
15 2802.

16 108. **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.

26 109. 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.

5 110. 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.

11 111. 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.

16 112. 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.

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

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

1 minimum wage.

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

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

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

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

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

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

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

27 120. Based on information and belief, DEFENDANTS failed to provide Aggrieved
28 Employees with suitable seating, and when such employees were not engaged in duties which

1 required them to stand, no seating was placed in reasonable proximity to their workstations.

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

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

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

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

26 125. For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck
27 for at least approximately six (6) days following PLAINTIFF's date of termination, and
28 PLAINTIFF's late final paycheck was devoid of all wages owed, including without limitation, all

1 owed minimum wages, overtime wages, predictability pay wages, premium wages, vacation pay,
2 all owed sick leave and/or paid time off wages at the properly accrued rates, (including but not
3 limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary
4 compensation, including but not limited to, shift differentials).

5 126. Notably, DEFENDANTS failed to furnish PLAINTIFF with his vacation pay until
6 on or around April 22, 2024, nearly three (3) months following PLAINTIFF's separation of
7 employment with DEFENDANTS.

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

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

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

25 130. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

26 Unlawful Agreements.

27 131. Labor Code section 432.5 provides that "no employer...shall require any employee
28 or applicant for employment to agree, in writing, to any term or condition which is known by such

1 employer...to be prohibited by law.” Based on information and belief, DEFENDANTS required
2 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not
3 limited to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or
4 nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful
5 meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements
6 and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
7 employment in violation of Labor Code section 432.5.

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

16 133. Based on information and belief, DEFENDANTS also required Aggrieved
17 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
18 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
19 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
20 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

21 134. Based on further information and belief, DEFENDANTS knew that requiring
22 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
23 condition of obtaining and/or holding employment was unlawful.

24 135. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
25 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
26 432.5.

27 Unlawful Inquires into Criminal History

28 136. Labor Code section 432.7 prohibits an employer from asking applicants about past

1 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
2 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
3 convictions on its employment application, in violation of California law.

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

9 Unlawful PAGA Waiver

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

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

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

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

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

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

12 **FIRST CAUSE OF ACTION**
13 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
14 **2698, *ET SEQ.***
15 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
16 **Defendants)**

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

18 **Failure to Keep Accurate Records**

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

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

28 147. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under

1 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
2 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
3 period during which the referenced statutes and Wage Order provisions were violated.²

4 **Meal Period Violations**

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

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

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

21 151. Employers must pay employees an additional hour of wages at the employees’
22 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
23 meal period, first meal period provided after five (5) hours, second meal period provided after 10
24 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to

25 ² Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”);
26 Labor Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which
27 the 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 provide an employee a meal period in accordance with the applicable provision of this Order, the
2 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
3 for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

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

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

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

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

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

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

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

2 **Rest Period Violations**

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

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

27 160. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
28 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained

1 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
2 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
3 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
4 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

21 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

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

12 **Minimum and Overtime Wage Violations**

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

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

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

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

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

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

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

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

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

26 177. Based on information and belief, DEFENDANTS further violated California's
27 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
28 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary

1 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
2 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
3 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
4 other Aggrieved Employees.

5 178. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
6 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
7 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
8 Wage Orders, section 20.

9 **Statutory Wage Violations**

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

21 **Refusal to Make Payment**

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

1 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

2 **Standard Conditions of Labor Violations**

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

11 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

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

25 **Wage Statement Violations**

26 191. California law requires every employer semi-monthly or at the time of each payment
27 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
28 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of

1 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
2 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
3 is paid; (7) the name of the employee and only the last four digits of his or her social security number
4 or an employee identification number other than a social security number; (8) the name and address
5 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
6 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

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

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

25 194. As explained above, wage statements issued by DEFENDANTS failed to list the
26 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
27 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
28 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices

1 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
2 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
3 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

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

14 198. DEFENDANTS provided inaccurate wage statements that list a “Cumulative Rate”
15 in dollars but fail to list the corresponding hours/units and fail to include the “Cumulative Rate” in
16 the total gross and net wages earned for the pay period(s), in violation of including but not limited
17 to, Labor Code sections 226(a)(1), 226(a)(5) and/or 226(a)(9).

18 199. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
19 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
20 Employees over whether they received all wages owed to them.

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

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

27 202. DEFENDANTS’ knowingly and intentionally failed to provide PLAINTIFF and
28 Aggrieved Employees with accurate, itemized wage statements.

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

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

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

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

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

27 207. Based on information and belief, DEFENDANTS charge an additional service

28 ⁴ Labor Code § 226.3 (establishing that the civil penalty is ~~42~~ ² per employee per violation”).

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

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

10 **Denied Predictability Pay**

11 209. Based on information and belief, Aggrieved Employees worked at least two (2) hours
12 in a particular week for DEFENDANTS at DEFENDANTS' location(s) operating within the City
13 of Los Angeles. Based on further information and belief, DEFENDANTS implemented changes to
14 Aggrieved Employees' work schedules without complying with the requirements of the City of Los
15 Angeles Fair Work Week Ordinance and without paying all owed predictability pay to Aggrieved
16 Employees.

17 210. For example, based on information and belief, DEFENDANTS made changes to
18 Aggrieved Employees' work schedules less than fourteen (14) days before the start of the work
19 period, however, DEFENDANTS failed to pay these Aggrieved Employees with all owed
20 predictability pay wages, in violation of including but not limited to, the City of Los Angeles Fair
21 Work Week Ordinance. See Los Angeles Municipal Code Chapter XVIII Art. 5 Sec. 185 and Art.
22 8 Sec. 188.

23 211. Based on information and belief, DEFENDANTS further failed to provide each new
24 Aggrieved Employee with a written Good Faith Estimate of Employee's Work Schedule before
25 hiring, further failing to provide a written Good Faith Estimate within ten (10) days of Aggrieved
26 Employees' respective requests for the estimate. Based on further information and belief,
27 DEFENDANTS failed to provide Aggrieved Employees with written notice of their work schedules
28 at least fourteen (14) calendar days before the start of the work period.

1 **Unlawful Deductions**

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

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

14 **Reporting Time Pay Violations**

15 214. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

6 **Seating Violations**

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

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

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

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

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

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

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

1 223. The Aggrieved Employees worked in various positions, including but not limited to,
2 as cashiers and/or similar title(s) and/or position(s). The nature of Aggrieved Employees' work
3 reasonably permitted the use of seats. However, DEFENDANTS failed to provide suitable seating
4 in reasonable proximity to Aggrieved Employees' work areas in violation of section 14(A-B) of all
5 applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to
6 civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section
7 and IWC Wage Order provision, for each Aggrieved Employee, results in a separate civil penalty.

8 **Sick Leave Violations**

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

16 225. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
17 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
18 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
19 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
20 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

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

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

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

7 230. On information and belief, PLAINTIFF alleges that all of these practices were
8 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

24 **Untimely Payment of Final Wages**

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

1 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
2 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
3 to his or her wages at the time of quitting.”

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

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

16 237. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
17 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
18 256.

19 **Violation of Labor Code Section 208**

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

24 239. Based on information and belief, DEFENDANTS have a policy and practice of
25 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
26 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
27 office or agency of DEFENDANTS in the county where the work was performed, in violation of
28 Labor Code Section 208.

1 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

2 *Unlawful Agreements.*

3 240. Labor Code section 432.5 provides that “no employer...shall require any employee
4 or applicant for employment to agree, in writing, to any term or condition which is known by such
5 employer...to be prohibited by law.” Based on information and belief, DEFENDANTS required
6 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not
7 limited to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or
8 nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful
9 meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements
10 and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
11 employment in violation of Labor Code section 432.5.

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

20 242. Based on information and belief, DEFENDANTS also required Aggrieved
21 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
22 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
23 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
24 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

25 243. Based on further information and belief, DEFENDANTS knew that requiring
26 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
27 condition of obtaining and/or holding employment was unlawful.

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

1 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
2 432.5.

3 Unlawful Inquires into Criminal History

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

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

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

18 Unlawful PAGA Waiver

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

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

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

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

11 **Violation of Labor Code Section 432.6**

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

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

19 254. Labor Code Section 432.6(b) provides in pertinent part:

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

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

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

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

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

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

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4. For such other and further relief that the Court deems just and proper.

Dated: August 9, 2024

CROSNER LEGAL, PC

By: 

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