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on behalf of the State of California and all Aggrieved Employees
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN FRANCISCO**

12 ELENA NACARINO, on behalf of the State
of California and all Aggrieved Employees,

13 Plaintiff,

14 v.
15

16 HALLMARK AVIATION SERVICES,
17 L.P., a California Limited Partnership; and
DOES 1-100, inclusive,

18 Defendants.
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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

06/17/2024
Clerk of the Court
BY: SHENEQUA GLADNEY
Deputy Clerk

Case No.:

CGC-24-615476

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

1 Plaintiff, ELENA NACARINO, (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants
3 HALLMARK AVIATION SERVICES, L.P., a California Limited Partnership; 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 Francisco pursuant to
16 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within
17 this judicial district, DEFENDANTS assigned PLAINTIFF to work in this judicial district and
18 conduct alleged by PLAINTIFF herein occurred in this 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 Francisco.

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 worked for DEFENDANTS during the relevant period as a non-exempt
27 employee with a job title(s) of customer service agent and/or a similar title(s) and/or position(s)
28 beginning in or around September 2023. PLAINTIFF worked for DEFENDANTS at

1 DEFENDANTS' San Francisco, California location(s).

2 6. Defendant HALLMARK AVIATION SERVICES, L.P. is a California Limited
3 Partnership that, at all relevant times, was authorized to do business within the State of California
4 and is doing business in the State of California.

5 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
6 airport lounges and/or facilities and/or other location(s) in California, including but not limited to,
7 the airport lounges and/or facilities and/or other locations in airports in various cities throughout
8 California, including but not limited to, airport lounges, facilities and/or locations in Los Angeles,
9 San Diego, and San Francisco, California. DEFENDANTS, through its various locations, serve the
10 transportation and/or customer service industry.¹

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

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

27
28 ¹ See <https://hallmark-aviation.com/locations/>. Last visited on June 15, 2024.

1 **JOINT LIABILITY**

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

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

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

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

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

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

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

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

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

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

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

20 **PAGA ALLEGATIONS**

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

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

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

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

13 21. PLAINTIFF, on April 11, 2024, through counsel, gave written notice by online filing
14 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
15 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
16 in this Complaint (“PAGA Notice”). PLAINTIFF’s PAGA Notice was also sent to DEFENDANTS
17 via certified mail.

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

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

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

1 **FACTUAL ALLEGATIONS**

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

6 26. PLAINTIFF worked for DEFENDANTS during the Paga Period (defined below) as
7 a non-exempt employee with a job title of customer service agent and/or a similar title(s) and/or job
8 position(s) beginning in or around September 2023.

9 27. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' San Francisco,
10 California location(s).

11 28. PLAINTIFF regularly worked at least four (4) to seven (7) hours per day, at least
12 five (5) days per week, at times working more than eight (8) hours in a workday and/or more than
13 forty (40) hours in a work week.

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

16 30. Based on information and belief, DEFENDANTS also compensated Aggrieved
17 Employees with non-discretionary compensation including but not limited to, non-discretionary
18 bonus/incentive pay and/or shift differential pay and/or other non-discretionary compensation.

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

26 32. Based on information and belief, DEFENDANTS implemented a policy and/or
27 practice of rounding meal period start and end times and/or automatically deducting at least thirty
28 minutes per shift for meal periods, despite having actual and/or constructive knowledge that

1 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
2 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
3 PLAINTIFF and Aggrieved Employees of all wages owed.

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

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

12 35. For example, based on information and belief, at times, Aggrieved Employees were
13 required to stand in line behind other employees to access DEFENDANTS' time-keeping system
14 and/or were required to spend time reinitiating DEFENDANTS' time-keeping system before they
15 could clock in for the start of their shifts and/or after completing a purported meal period.

16 36. For example, upon arriving at work, PLAINTIFF and other Aggrieved Employees
17 were consistently suffered or permitted to stand in long employee lines to access DEFENDANTS'
18 electronic time-keeping system before PLAINTIFF and other Aggrieved Employees could clock in
19 for the start of their shifts each day. This time spent under DEFENDANTS' control, including but
20 not limited to, time spent waiting for other employees to clock in for the start of their shifts, was not
21 compensated, resulting in at least one (1) to two (2) minutes of uncompensated pre-shift off-the-
22 clock work during most if not all workdays and the underpayment of wages owed to PLAINTIFF
23 and other Aggrieved Employees.

24 37. Based on information and belief, Aggrieved Employees were required to undergo
25 security screenings and/or other mandated screenings/DEFENDANTS' procedures before and/or
26 after a scheduled shift and/or before or after clocking in/out for work, resulting in pre-shift and/or
27 post-shift off-the-clock work.

28 38. For example, during including but not limited to, the approximately first four (4)

1 months of PLAINTIFF's employment, upon PLAINTIFF arriving at work but prior to clocking in
2 for the start of her shifts, DEFENDANTS required PLAINTIFF to be escorted onto the premises
3 and/or undergo security screenings. This times spent under DEFENDANTS' control, including but
4 not limited to, the aforementioned escort time and/or time spent undergoing security screenings,
5 was not recorded and not compensated, resulting in at least twenty (20) to thirty (30) minutes of pre-
6 shift off-the-clock work during most, if not all shifts, PLAINTIFF worked during including but not
7 limited to, the first four (4) months of PLAINTIFF's employment with DEFENDANTS.

8 39. For example, based on information and belief, DEFENDANTS required Aggrieved
9 Employees to be at their assigned workstations at the start of a scheduled shift, thereby forcing
10 Aggrieved Employees to gather work-related equipment and/or safety gear, make any necessary
11 adjustments to tools/equipment and/or perform maintenance/cleaning tasks, don work
12 clothing/uniforms and/or protective equipment, and/or complete other work tasks prior to their
13 scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock
14 work.

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

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

25 42. Based on information and belief, DEFENDANTS did not compensate Aggrieved
26 Employees for all time spent donning and doffing personal protective equipment, safety equipment
27 and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses, vests, hats/bump caps/safety
28 helmets and/or face masks) during meal periods, before the start of a scheduled shift, and after

1 completing a scheduled shift, resulting in DEFENDANTS' failure to pay Aggrieved Employees for
2 all work time and the underpayment of minimum wages and overtime wages owed to Aggrieved
3 Employees.

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

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

16 45. Based on information and belief, Aggrieved Employees were also pressured to
17 complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals
18 and expectations.

19 46. For example, based on information and belief, Aggrieved Employees were required
20 to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-
21 related phone calls and/or messages they received to their phones and/or mobile devices and were
22 required to respond to, including but not limited to, communications from supervisors regarding
23 scheduling and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved
24 Employees.

25 47. Based on information and belief, DEFENDANTS failed to pay Aggrieved
26 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
27 Employee worked in California.

28 48. Moreover, based on information and belief, DEFENDANTS failed to pay

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

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

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

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

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

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

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

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

24 56. Additionally, DEFENDANTS also violated California's overtime laws as to those
25 Aggrieved Employees that were subject to an Alternative Workweek Schedule (AWS).

26 57. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
27 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
28 and/or implemented in accordance with the requirements of California law and/or DEFENDANTS

1 failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws,
2 including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor
3 Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an
4 AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

5 58. (C) Election Procedures Election procedures for the adoption
6 and repeal of alternative workweek schedules require the following:

7 (1) Each proposal for an alternative workweek schedule shall be in
8 the form of a written agreement proposed by the employer. The
9 proposed agreement must designate a regularly scheduled alternative
10 workweek in which the specified number of workdays and work hours
11 are regularly recurring. The actual days worked within that alternative
12 workweek schedule need not be specified. The employer may propose
13 a single work schedule that would become the standard schedule for
14 workers in the work unit, or a menu of work schedule options, from
15 which each employee in the unit would be entitled to choose. If the
16 employer proposes a menu of work schedule options, the employee
17 may, with the approval of the employer, move from one menu option
18 to another. (2) In order to be valid, the proposed alternative workweek
19 schedule must be adopted in a secret ballot election, before the
20 performance of work, by at least a two-thirds (2/3) vote of the affected
21 employees in the work unit. The election shall be held during regular
22 working hours at the employees' work site. For purposes of this
23 subsection, "affected employees in the work unit" may include all
24 employees in a readily identifiable work unit, such as a division, a
25 department, a job classification, a shift, a separate physical location,
26 or a recognized subdivision of any such work unit. A work unit may
27 consist of an individual employee as long as the criteria for an
28 identifiable work unit in this subsection is met. (3) Prior to the secret

1 ballot vote, any employer who proposed to institute an alternative
2 workweek schedule shall have made a disclosure in writing to the
3 affected employees, including the effects of the proposed
4 arrangement on the employees' wages, hours, and benefits. Such a
5 disclosure shall include meeting(s), duly noticed, held at least 14 days
6 prior to voting, for the specific purpose of discussing the effects of
7 the alternative workweek schedule. An employer shall provide that
8 disclosure in a non- English language, as well as in English, if at least
9 five (5) percent of the affected employees primarily speak that non-
10 English language. The employer shall mail the written disclosure to
11 employees who do not attend the meeting. Failure to comply with this
12 paragraph shall make the election null and void. (4) Any election to
13 establish or repeal an alternative workweek schedule shall be held at
14 the work site of the affected employees. The employer shall bear the
15 costs of conducting any election held pursuant to this section. Upon a
16 complaint by an affected employee, and after an investigation by the
17 Labor Commissioner, the Labor Commissioner may require the
18 employer to select a neutral third party to conduct the election. (5)
19 Any type of alternative workweek schedule that is authorized by the
20 Labor Code may be repealed by the affected employees. Upon a
21 petition of one-third (1/3) of the affected employees, a new secret
22 ballot election shall be held and a two-thirds (2/3) vote of the affected
23 employees shall be required to reverse the alternative workweek
24 schedule. The election to repeal the alternative workweek schedule
25 shall be held not more than 30 days after the petition is submitted to
26 the employer, except that the election shall be held not less than 12
27 months after the date that the same group of employees voted in an
28 election held to adopt or repeal an alternative workweek schedule.

1 The election shall take place during regular working hours at the
2 employees' work site. If the alternative workweek schedule is
3 revoked, the employer shall comply within 60 days. Upon proper
4 showing of undue hardship, the Division of Labor Standards
5 Enforcement may grant an extension of time for compliance. (6) Only
6 secret ballots may be cast by affected employees in the work unit at
7 any election held pursuant to this section. The results of any election
8 conducted pursuant to this section shall be reported by the employer
9 to the Office of Policy, Research and Legislation within 30 days after
10 the results are final, and the report of election results shall be a public
11 document. The report shall include the final tally of the vote, the size
12 of the unit, and the nature of the business of the employer. (7)
13 Employees affected by a change in the work hours resulting from the
14 adoption of an alternative workweek schedule may not be required to
15 work those new work hours for at least 30 days after the
16 announcement of the final results of the election. (8) Employers shall
17 not intimidate or coerce employees to vote either in support of or in
18 opposition to a proposed alternative workweek.

19 59. No employees shall be discharged or discriminated against for
20 expressing opinions concerning the alternative workweek election or
21 for opposing or supporting its adoption or repeal. However, nothing
22 in this section shall prohibit an employer from expressing his/her
23 position concerning that alternative workweek to the affected
24 employees. A violation of this paragraph shall be subject to Labor
25 Code § 98 *et seq.*

26 60. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to
27 comply with the above procedures, and thus, failed to properly institute an alternative workweek for
28 the purpose of obtaining a lawful exemption from overtime premiums for its mandated AWS. Based

1 on information and belief, DEFENDANTS also failed to report the results to the Office of Policy,
2 Research, and Legislation, or the DLSE, within thirty after the purported election results, and thus,
3 violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This conduct results in
4 violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage Orders. These
5 violations subject employer to civil penalties under Labor Code §§ 558 and 2699, and All Applicable
6 Wage Orders. Each violation of each Labor Code section and Wage Order provision results in a
7 separate civil penalty, for each Aggrieved Employee, for each pay period during which the
8 referenced statutes and Wage Order provisions were violated.

9 61. Moreover, to the extent there was an AWS that was properly adopted,
10 DEFENDANTS violated California's overtime laws as to Aggrieved Employees that were subject
11 to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the
12 agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee
13 to work fewer hours than those that are regularly scheduled by the agreement, the employer shall
14 pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's
15 regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is
16 required to work the reduced hours." *See* Section 3 of all applicable Wage Orders.

17 62. Based on information and belief, at times during Aggrieved Employees' employment
18 by DEFENDANTS', Aggrieved Employees worked subject to an alternative work week schedule
19 in which Aggrieved Employees worked ten (10) hours per shift, four (4) shifts per week.

20 63. Based on information and belief, at times, Aggrieved Employees that were subject
21 to an AWS, were sent home early and/or worked less hours than those that were scheduled under
22 the AWS.

23 64. On such shortened shifts, Aggrieved Employees were entitled to overtime pay at 1.5
24 times the regular rate of pay after the first eight hours of work. Instead, DEFENDANTS paid
25 Aggrieved Employees their base rate for all hours worked on the shortened shift(s) in violation of
26 the alternative workweek schedule, and in violation of California Labor Code section 510, the
27 applicable Wage Order, and Labor Code section 1198.

28 65. As such, Aggrieved Employees that were subject to an AWS were also deprived of

1 all owed overtime wages when required to work shortened shifts.

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

11 67. For example, based on information and belief, Aggrieved Employees were forced to
12 take late meal periods in order to complete assigned job duties. Based on information and belief,
13 Aggrieved Employees at times interrupted during purported meal periods and/or had meal periods
14 cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned job
15 duties.

16 68. For example, during including but not limited to, the first two (2) months of
17 PLAINTIFF's employment, PLAINTIFF was required to take shortened meal periods, typically
18 lasting a maximum of ten (10) to twenty (20) minutes in length, resulting in denied meal periods.

19 69. Notably, DEFENDANTS' time records for PLAINTIFF show a clock out for an
20 exact thirty (30) minute meal period on including but not limited to the following dates: 9.25.23,
21 9.26.23, 9.27.23, 9.28.23, 9.29.23, 10.02.23, 10.03.23, 10.04.23 and 01.07.24. Based on information
22 and belief, DEFENDANTS rounded and/or automatically deducted precisely thirty-minutes for
23 many if not all shifts PLAINTIFF worked and was owed at least one meal period even though
24 DEFENDANTS had actual and/or constructive knowledge that PLAINTIFF was required to take
25 interrupted, shortened (i.e. less than thirty minutes), on-duty and/or work through her meal period(s)
26 completely, resulting in meal period law violations as well as DEFENDANTS' failure to
27 compensate PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF.

28 70. Moreover, DEFENDANTS required PLAINTIFF to monitor her cell phone for work

1 communications during any meal periods, and PLAINTIFF was frequently required to respond to
2 work-related communications while clocked out for meal periods, resulting in denied meal periods
3 as well as DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the
4 underpayment of wages owed to PLAINTIFF.

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

10 72. Based on information and belief, DEFENDANTS implemented policies and/or
11 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
12 during unpaid meal periods.

13 73. For example, DEFENDANTS required PLAINTIFF to monitor PLAINTIFF's cell
14 phone / mobile device for work-related communications during any meal periods, and as such,
15 PLAINTIFF was not relieved of all duties and DEFENDANTS' control during unpaid meal periods,
16 resulting in denied meal periods as well as DEFENDANTS failure to compensate PLAINTIFF for
17 all hours worked and the underpayment of wages owed to PLAINTIFF.

18 74. For example, DEFENDANTS required PLAINTIFF to monitor PLAINTIFF's cell
19 phone / mobile device for work-related communications during any meal periods, and as such,
20 PLAINTIFF was not relieved of all duties and DEFENDANTS' control during unpaid meal periods,
21 resulting in denied meal periods as well as DEFENDANTS failure to compensate PLAINTIFF for
22 all hours worked and the underpayment of wages owed to PLAINTIFF.

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

27 76. Based on information and belief, despite DEFENDANTS' failure to provide lawful
28 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end

1 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
2 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
3 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
4 Employees did not receive lawful meal periods.

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

7 78. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
8 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
9 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
10 did DEFENDANTS have any sort of compliant policy in practice.

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

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

21 81. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees an
22 additional hour of wages at their respective regular rates of compensation for each workday a lawful
23 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
24 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
25 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
26 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
27 compensation for purposes of calculating the owed meal period premium.

28 82. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide

1 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
2 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
3 middle of the work period, as required by law.

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

8 84. Based on information and belief, DEFENDANTS did not have a have a compliant
9 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
10 practice.

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

15 86. For example, PLAINTIFF was almost always, if not always, required to work
16 through her owed rest periods due to the need to complete assigned job duties.

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

21 88. Based on information and belief, DEFENDANTS did not have a lawful policy,
22 instruction, or practice as to the taking, timing, or duty-free nature of rest periods. For example,
23 based on information and belief, DEFENDANTS failed to authorize and permit rest periods that
24 were a "net" ten minutes in a suitable rest area, and instead, to the extent rest periods were provided,
25 DEFENDANTS limited PLAINTIFF and other Aggrieved Employees to only ten-minute rest
26 periods, requiring them to be back at their workstations within ten minutes of leaving their work
27 stations , in violation of California rest period law.

28 89. Moreover, based on information and belief, DEFENDANTS failed to provide any

1 form of a third rest period on shifts lasting longer than ten hours.

2 90. Based on information and belief, DEFENDANTS implemented policies and/or
3 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
4 DEFENDANTS' control during rest periods. For example, based on information and belief,
5 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to monitor work-related
6 communication devices during any rest periods, and as such, PLAINTIFF and other Aggrieved
7 Employees were not relieved of all duties and DEFENDANTS' control during any rest periods, in
8 violation of California rest period law.

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

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

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

23 94. DEFENDANTS' locations/facilities are generally similar in layout and design, and
24 there was, and continues to be, space that allows for a resting facility that employees may use to
25 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
26 Employees with a resting facility within DEFENDANTS' facilities/locations with reasonable or no
27 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a
28 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to

1 resting, including but not limited to leaning up against the wall, or search for facilities outside of
2 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
3 vehicles.

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

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

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

17 98. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
18 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
19 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
20 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
21 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
22 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
23 other off-the-clock work policies and practices described above) which results in a violation of
24 Labor Code section 226(a).

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

28 100. Based on information and belief, wage statements issued by DEFENDANTS failed

1 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid.

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

8 102. Based on information and belief, DEFENDANTS failed to accurately list all
9 deductions on wage statements issued to Aggrieved Employees, in violation of including but not
10 limited to, Labor Code section 226(a)(4).

11 103. DEFENDANTS' failure to accurately list all hours worked on all wage statements
12 caused confusion to PLAINTIFF and caused and continue to cause confusion to the Aggrieved
13 Employees over whether they received all wages owed to them. PLAINTIFF and Aggrieved
14 Employees were injured by DEFENDANTS' failure to provide accurate wage statements.

15 104. In addition, because of the violations detailed above, including but not limited to, not
16 paying regular and overtime wages for all hours worked, not paying all sick leave wages at the
17 proper rates, and failing to provide meal and rest break premiums, DEFENDANTS have violated
18 California Labor Code § 226 by willfully failing to furnish PLAINTIFF and all Aggrieved
19 Employees with accurate, itemized wage statements.

20 105. As described herein, based on information and belief, DEFENDANTS also failed to
21 incorporate all forms of non-discretionary compensation earned during the pay period into the
22 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
23 of overtime worked by PLAINTIFF and other Aggrieved Employees.

24 106. Based on information and belief, wage statements issued by DEFENDANTS failed
25 to list all applicable hourly rates in effect during the pay period and the corresponding number of
26 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

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

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

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

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

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

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

16 112. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
17 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
18 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
19 from Aggrieved Employees paychecks during the relevant period including but not limited to,
20 deducting costs of uniforms and/or other business costs and/or deducting wages for purported
21 overpayments from previous pay periods and/or unlawfully deducting wages for negligently
22 damaged property. Such a practice is in violation of including but not limited to, Labor Code
23 Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

24 113. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
25 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
26 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
27 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
28 required by law, including but not limited to the following records: total daily hours worked,

1 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
2 began and ended each work period, time records of meal periods, and accurate itemized wage
3 statements.

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

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

16 116. Based on information and belief, DEFENDANTS shifted the costs of doing business
17 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
18 to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of Aggrieved
19 Employees personal cell phones/mobile devices, internet and/or data usage for work-related
20 purposes, including but not limited to, to receive and respond to work-related messages and/or phone
21 calls. For example, based on information and belief, Aggrieved Employees were required to
22 receive and respond to work-related calls and/or messages from supervisors and/or other employees
23 regarding scheduling and/or other work tasks but were not reimbursed by DEFENDANTS at all
24 and/or in full for these business expenses.

25 117. For example, DEFENDANTS required PLAINTIFF to use her personal cell phone
26 for work, including but not limited to, to make and/or receive work-related calls and/or messages,
27 however, DEFENDANTS failed to provide PLAINTIFF with any and/or full reimbursement for the
28 business expenses PLAINTIFF Incurred in connection with being required to use PLAINTIFF's

1 personal cell phone for work, including without limitation, increased data plan charges.

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

6 119. Based on information and belief, at times, Aggrieved Employees were not
7 reimbursed for the business use of their personal vehicles, including mileage, wear and tear and/or
8 cost of fuel when they were required to drive around and/or between job sites, and/or otherwise use
9 their personal vehicles in carrying out the duties assigned by DEFENDANTS.

10 120. As such, DEFENDANTS failed to compensate Aggrieved Employees at the legally
11 mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant
12 period.

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

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

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

26 124. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
27 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
28 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the

1 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
2 accrued sick leave hours on the correct number of hours worked (as a result of the
3 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
4 times/other required off-the-clock work including but not limited to unpaid meal periods) and by
5 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
6 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
7 compensation into the sick leave pay rate calculation.

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

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

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

26 128. As such, DEFENDANTS have violated California's paid sick leave laws and
27 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
28 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These

1 unlawful practices and polices violate Labor Code sections 245-248.5.

2 129. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
3 provides as follows:

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

12 131. Aggrieved Employees were not paid reporting time wages in accordance with
13 California law, including but not limited to the applicable IWC Wage Order. For example, based on
14 information and belief, at times, Aggrieved Employees reported to work for a scheduled shift but
15 were sent home and/or were not put to work and were not paid all owed reporting time pay wages
16 in accordance with California law.

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

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

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

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

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

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

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

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

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

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

1 140. Upon separation of employment, Aggrieved Employees' final paychecks were not
2 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
3 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
4 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
5 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
6 accrued rates.

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

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

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

24 144. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

25 Unlawful Agreements.

26 145. Labor Code section 432.5 provides that "no employer...shall require any employee
27 or applicant for employment to agree, in writing, to any term or condition which is known by such
28 employer...to be prohibited by law." Based on information and belief, DEFENDANTS required

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

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

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

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

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

26 Unlawful Inquires into Criminal History

27 150. Labor Code section 432.7 prohibits an employer from asking applicants about past
28 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on

1 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
2 convictions on its employment application, in violation of California law.

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

8 Unlawful PAGA Waiver

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

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

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

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

28 156. **Violation of Labor Code Section 432.6.** Based on information and belief,

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

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

11
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)**

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

18 **Failure to Keep Accurate Records**

19 159. 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.

23 160. 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.

28 161. 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**

5 162. 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.

10 163. 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.*

13 164. 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”).

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

1 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.

4 166. 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.

10 167. 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.

14 168. 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.

16 169. 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.

20 170. 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.

25 171. 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**

3 172. 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).

17 173. 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.”).

27 174. 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.

5 175. 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.

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

12 177. 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.

18 178. 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.**

22 179. 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."

26 180. 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 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to
4 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.

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

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

12 **Minimum and Overtime Wage Violations**

13 183. 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.

20 184. 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.*

26 185. 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.

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

7 187. 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.

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

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

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

27 191. DEFENDANTS also violated California's overtime laws as to those Aggrieved
28 Employees that were subject to an AWS but were required to work a short shift. Under Section(B)(2)

1 of all applicable IWC Wage Orders, “[i]f an employer, whose employees have adopted an alternative
2 workweek agreement permitted by this order requires an employee to work fewer hours than those
3 that are regularly scheduled by the agreement, the employer shall pay the employee overtime
4 compensation at a rate of one and one-half times the employee’s regular rate of pay for all hours
5 worked in excess of eight (8) hours, and double the employee’s regular rate of pay for all hours
6 worked in excess of 12 hours for the day the employee is required to work the reduced hours.”

7 192. Based on information and belief, Aggrieved Employees that were subject to an AWS
8 worked a short shift (i.e. less than 10 hours) on various diverse dates during the PAGA Period. On
9 those shifts, Aggrieved Employees were entitled to overtime wages at 1.5 times their regular rate of
10 pay for all hours worked over eight hours in the shortened shift. Instead, DEFENDANTS paid
11 Aggrieved Employees at their base rate for all hours worked on the shortened shift, in violation of
12 California’s overtime laws.

13 193. Based on further information and belief, DEFENDANTS required Aggrieved
14 Employees to work more than eight (8) hours on days that were not scheduled workdays without
15 compensating PLAINTIFF and other Aggrieved Employees at twice their regular rate(s) of pay for
16 the time worked beyond eight (8) hours on those days, in violation of California overtime laws,
17 including but not limited to, California Labor Code sections 510 and 511, the applicable Wage
18 Order, and Labor Code section 1198.

19 194. This conduct results in violations of Labor Code sections 218.5, 510, 511, 558, 558.1,
20 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
21 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
22 Wage Orders, section 20.

23 **Statutory Wage Violations**

24 195. California Labor Code section 223 makes it unlawful for an employer to secretly pay
25 wages lower than required by statute while purporting to pay legal wages. As described above,
26 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
27 earned minimum and overtime compensation for all hours worked which resulted in the payment of
28 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of

1 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
2 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
3 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
4 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
5 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
6 Labor Code § 2699(f)-(g).

7 **Refusal to Make Payment**

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

16 **Standard Conditions of Labor Violations**

17 197. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
18 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
19 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
20 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
21 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
22 minimum/overtime wages and other violations described herein result in separate violations of
23 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
24 1197.1 and 2699.

25
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 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

12 **Wage Statement Violations**

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

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

1 the employee, in violation of Labor Code section 226(a)(9).

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

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

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

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

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

1 214. DEFENDANTS' failure to accurately list all hours worked on all wage statements
2 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
3 Employees over whether they received all wages owed to them.

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

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

10 217. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
11 Aggrieved Employees with accurate, itemized wage statements.

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

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

24 **Unlawful Deductions**

25 220. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
26 an employee any part of wages theretofore paid by said employer to said employee." Based on
27 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees

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

1 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
2 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
3 Section 2699.

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

10 **Reporting Time Pay Violations**

11 222. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

1 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

2 **Seating Violations**

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

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

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

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

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

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

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

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

1 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
2 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
3 separate civil penalty.

4 **Sick Leave Violations**

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

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

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

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

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

1 wages.

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

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

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

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

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

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

20 **Violation of Labor Code Section 208**

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

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

1 Labor Code Section 208.

2 **Untimely Payment of Final Wages**

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

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

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

22 247. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
23 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
24 256.

25 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

26 *Unlawful Agreements.*

27 248. 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.

8 249. 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.

16 250. 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.

21 251. 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.

24 252. 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

28 253. 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.

4 254. 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.

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

14 Unlawful PAGA Waiver

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

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

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

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

6 **Violation of Labor Code Section 432.6**

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

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

14 262. Labor Code Section 432.6(b) provides in pertinent part:

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

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

24 265. Under the provisions of PAGA and the above mentioned Labor Code sections,
25 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
26 226.7, 227.3, 245-248.6, 256, 432.5, 432.6, 432.7, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1194,
27 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as
28 all interpretations of these laws by California Courts and administrative bodies, as well as any other

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

11 266. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,

12 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

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PRAYER FOR RELIEF

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

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

Dated: June 17, 2024

CROSNER LEGAL, PC

By: 

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Brandon Brouillette, Esq.
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ELENA NACARINO