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on behalf of the State of California and all Aggrieved Employees  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SANTA CLARA**

**24CV441196**

12 CARLOS LOBATOS, on behalf of the State  
of California and all Aggrieved Employees,

Case No.:

13 Plaintiff,

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

14  
15 v.

16 SANMINA CORPORATION, a Delaware  
Corporation; and DOES 1-100, inclusive,

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

### 6 **INTRODUCTION**

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

### 12 **JURISDICTION AND VENUE**

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

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

### 23 **THE PARTIES**

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

26 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for  
27 DEFENDANTS as a non-exempt employee with a job title(s) of machine operator and/or a similar  
28 title(s) and/or job position(s) from in or around February 2022 through in or around September 2023.

1 PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Chula Vista, California locations(s).  
2 PLAINTIFF regularly worked at least eight (8) to thirteen (13) hours per day, at least five (5) days  
3 per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as  
4 hours worked. Based on information and belief, DEFENDANTS also compensated Aggrieved  
5 Employees with non-discretionary bonuses and/or incentive pay and/or shift differential and/or  
6 other non-discretionary compensation.

7         6. Defendant SANMINA CORPORATION is a Delaware Corporation that, at all  
8 relevant times, was authorized to do business within the State of California and is doing business in  
9 the State of California.

10         7. DEFENDANTS own, operate, manage and/or staff its employees to work at the  
11 warehouse distribution centers, manufacturing and/or processing centers and/or facilities and/or  
12 other location(s) in California, including but not limited to the warehouse distribution centers,  
13 manufacturing and/or processing centers and/or facilities in various cities in California, including  
14 but not limited to, Chula Vista, Costa Mesa, Fremont, and San Jose, California. DEFENDANTS,  
15 through its various locations serve, including but not limited to, the manufacturing industry.<sup>1</sup>

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

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

28 <sup>1</sup> See <https://www.sanmina.com/>. Last visited on June 12, 2024.

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

### 5 **JOINT LIABILITY**

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

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

1 and Aggrieved Employees to work for them.

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

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

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

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

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

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

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

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

24 **PAGA ALLEGATIONS**

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

28 All current and former non-exempt employees that worked either

1 directly or via a staffing agency for any one or more of the  
2 DEFENDANTS at any location in California at any time from one  
3 year plus 65 days from the filing of the initial Complaint through the  
4 present (“PAGA Period”).

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

#### 16 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

17 21. PLAINTIFF, on April 8, 2024, through counsel, gave written notice by online filing  
18 with the California Labor and Workforce Development Agency (“LWDA”) informing it that  
19 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged  
20 in this Complaint (“PAGA Notice”). PLAINTIFF’s PAGA Notice was also sent to DEFENDANTS  
21 via certified mail.

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

25 23. The LWDA did not provide notice of its intention to investigate DEFENDANTS’  
26 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the  
27 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.  
28 PLAINTIFF has exhausted the administrative remedies as required by Labor Code section 2699.3.

1 Consequently, PLAINTIFF's right to file the instant lawsuit has duly accrued.

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

5 **FACTUAL ALLEGATIONS**

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

10 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for  
11 DEFENDANTS as a non-exempt employee with a job title(s) of machine operator and/or a similar  
12 title(s) and/or job position(s) from in or around February 2022 through in or around September 2023.

13 27. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Chula Vista,  
14 California locations(s).

15 28. PLAINTIFF regularly worked at least eight (8) to thirteen (13) hours per day, at least  
16 five (5) days per week.

17 29. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by  
18 DEFENDANTS as hours worked.

19 30. Based on information and belief, DEFENDANTS also compensated Aggrieved  
20 Employees with non-discretionary bonuses and/or incentive pay and/or shift differential and/or  
21 other non-discretionary compensation.

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

24 32. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate  
25 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of  
26 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved  
27 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time  
28 rounding policies, and failure to relieve employees of all duties/employer control during unpaid

1 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained  
2 below.

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

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

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

17 36. For example, upon arriving at work, PLAINTIFF and other Aggrieved Employees  
18 were consistently suffered or permitted to stand in long employee lines to access DEFENDANTS'  
19 electronic time-keeping system before PLAINTIFF and other Aggrieved Employees could clock in  
20 for the start of their shifts each day. This time spent under DEFENDANTS' control, including but  
21 not limited to, time spent waiting for other employees to clock in for the start of their shifts, was not  
22 compensated, resulting in an average of at least two (2) to five (5) minutes of uncompensated pre-  
23 shift off-the-clock work during most if not all workdays and the underpayment of minimum and  
24 overtime wages owed to PLAINTIFF and other Aggrieved Employees.

25 37. Also, as explained herein, PLAINTIFF and other Aggrieved Employees were  
26 typically required to spend at least a couple minutes waiting in line behind other employees to access  
27 DEFENDANTS' timekeeping system before PLAINTIFF and other Aggrieved Employees could  
28 clock back into work from any meal periods, resulting in DEFENDANTS' failure to compensate

1 PLAINTIFF and other Aggrieved Employees for all work time and the underpayment of wages  
2 owed to PLAINTIFF and other Aggrieved Employees.

3 38. Based on information and belief, DEFENDANTS required Aggrieved Employees to  
4 be at their assigned workstations at the start of a scheduled shift, thereby forcing Aggrieved  
5 Employees to gather work-related equipment and/or safety gear, make any necessary adjustments  
6 to tools/equipment and/or perform maintenance/cleaning tasks, don work clothing/uniforms and/or  
7 protective equipment, and/or complete other work tasks prior to their scheduled shift and/or prior to  
8 clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

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

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

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

25 42. Based on information and belief, at times, DEFENDANTS' electronic employee  
26 time-keeping system/app malfunctioned such that Aggrieved Employees were required to either  
27 reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable  
28 to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-

1 the-clock work and the underpayment of wages owed to Aggrieved Employees. Based on  
2 information and belief, Aggrieved Employees experienced the same issues when clocking out for  
3 shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not  
4 recorded and not compensated and resulted in unpaid minimum wages owed to Aggrieved  
5 Employees.

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

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

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

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

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

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

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

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

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

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

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

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

27          55.     Based on information and belief, DEFENDANTS adopted an Alternative Workweek  
28 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected

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

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

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

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

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

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

27 58. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to  
28 comply with the above procedures, and thus, failed to properly institute an alternative workweek for

1 the purpose of obtaining a lawful exemption from overtime premiums for its mandated 10-hour/4-  
2 day schedule. Based on information and belief, DEFENDANTS also failed to report the results to  
3 the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the purported  
4 election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This  
5 conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage  
6 Orders. These violations subject employer to civil penalties under Labor Code §§ 558 and 2699,  
7 and All Applicable Wage Orders. Each violation of each Labor Code section and Wage Order  
8 provision results in a separate civil penalty, for each Aggrieved Employee, for each pay period  
9 during which the referenced statutes and Wage Order provisions were violated.

10 59. Moreover, to the extent there was an AWS that was properly adopted,  
11 DEFENDANTS violated California's overtime laws as to Aggrieved Employees that were subject  
12 to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the  
13 agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee  
14 to work fewer hours than those that are regularly scheduled by the agreement, the employer shall  
15 pay the employee overtime compensation at a rate of one and one-half (1 ½ ) times the employee's  
16 regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is  
17 required to work the reduced hours." *See* Section 3 of all applicable Wage Orders. Based on  
18 information and belief, at times during the relevant period, Aggrieved Employees worked subject to  
19 an alternative work week schedule. Based on information and belief, at times, Aggrieved Employees  
20 that were subject to an AWS, were sent home early and/or worked less hours than those that were  
21 scheduled under the AWS. On such shortened shifts, Aggrieved Employees were entitled to  
22 overtime pay at 1.5 times the regular rate of pay after the first eight hours of work. Instead,  
23 DEFENDANTS paid Aggrieved Employees their base rate for all hours worked on the shortened  
24 shift(s) in violation of the alternative workweek schedule, and in violation of California Labor Code  
25 section 510, the applicable Wage Order, and Labor Code section 1198. As such, Aggrieved  
26 Employees that were subject to an AWS were also deprived of all owed overtime wages when  
27 required to work shortened shifts.

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

9         61. For example, PLAINTIFF was often required to work through part or all of his owed  
10 meal periods due to including but not limited to, lack of relief workers and the need to complete  
11 assigned job duties.

12         62. Also, PLAINTIFF was typically required to cut any meal periods short to account  
13 for the typical wait time of at least approximately a couple of minutes spent standing in line behind  
14 other employees to access DEFENDANTS' timekeeping system before he could then clock back in  
15 to work after any meal period, resulting in denied meal periods as well as DEFENDANTS' failure  
16 to compensate PLAINTIFF for all work time.

17         63. Based on information and belief, DEFENDANTS would frequently require  
18 PLAINTIFF and other Aggrieved Employees to work through part and/or all of their unpaid meal  
19 periods and/or cut them short. DEFENDANTS also required PLAINTIFF and other Aggrieved  
20 Employees to record that they had taken at least a thirty-minute, uninterrupted, off-duty meal period  
21 and/or would unlawfully edit the clock in and clock out times for PLAINTIFF's and/or other  
22 Aggrieved Employees' meal periods in order to display at least a thirty minute off-duty meal period  
23 during most if not all shifts worked, notwithstanding the fact that DEFENDANTS had actual and/or  
24 constructive knowledge that DEFENDANTS had required PLAINTIFF and other Aggrieved  
25 Employees' to perform work-related tasks during their meal periods.

26         64. Based on information and belief, other Aggrieved Employees were consistently  
27 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods  
28 interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing,

1 the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and  
2 expectations.

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

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

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

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

18 69. For example, when PLAINTIFF worked more than ten (10) and/or twelve (12} hours  
19 in a shift, PLAINTIFF was typically, if not always, denied a second legally compliant meal period.

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

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

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

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

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

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

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

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

24 77. For example, based on information and belief, Aggrieved Employees were often, if  
25 not always, unable to take compliant rest periods due to their need to complete assigned job duties  
26 and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported  
27 rest periods restricted to DEFENDANTS' premises.

28 78. For example, PLAINTIFF was frequently, if not always, required to work through  
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1 part or all of his owed rest periods and/or was not relieved of all duties and DEFENDANTS' control  
2 during any rest periods, resulting in consistently denied rest periods during PLAINTIFF's  
3 employment.

4 79. Based on information and belief, DEFENDANTS did not have a lawful policy,  
5 instruction, or practice as to the taking, timing, or duty-free nature of rest periods.

6 80. For example, based on information and belief, DEFENDANTS failed to authorize  
7 and permit rest periods that were a "net" ten minutes in a suitable rest area, and instead, to the extent  
8 rest periods were provided, DEFENDANTS limited PLAINTIFF and other Aggrieved Employees  
9 to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes  
10 of leaving their work stations , in violation of California rest period law.

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

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

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

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

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

1 compensation for purposes of calculating the owed rest period premium.

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

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

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

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

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

28       91.     DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved

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

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

12 93. Based on information and belief, wage statements issued by DEFENDANTS failed  
13 to list all applicable hourly rates in effect during the pay period and the corresponding number of  
14 hours worked at each hourly rate by the employee, in violation of including but not limited to, Labor  
15 Code section 226(a)(9). For example, based on information and belief, DEFENDANTS failed to  
16 incorporate all non-discretionary compensation into the regular rate(s) of pay for purposes of  
17 calculating the owed overtime rate, resulting in the miscalculation of the owed overtime rate and  
18 DEFENDANTS' failure to list all applicable hourly rates in effect during the pay period and the  
19 corresponding number of hours worked at each hourly rate by the Aggrieved Employee on wage  
20 statements issued by DEFENDANTS to Aggrieved Employees, in violation of including but not  
21 limited to, Labor Code Section 226(a)(9).

22 94. Based on information and belief, DEFENDANTS issued wage statements to  
23 Aggrieved Employees that fail to accurately list all deductions, in violation of Labor Code section  
24 226(a)(4).

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

27 96. For example, based on information and belief, at times, DEFENDANTS issued wage  
28 statements to Aggrieved Employees containing payment for hours worked during previous pay

1 periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate  
2 pay period for that retroactive pay, further failing to list the total hours worked for the pay period,  
3 including but not limited to, the total hours worked for the pay period the retroactive pay corresponds  
4 with, in violation of including but not limited to, Labor Code section 226(a)(2) and/or 226(a)(6).

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

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

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

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

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

26 102. For example, PLAINTIFF, through counsel, sent a written request for payroll and  
27 personnel records to DEFENDANTS on or around including but not limited to the following dates:  
28 April 16, 2024. Yet, DEFENDANTS failed to timely produce complete records within the time

1 periods delineated by California labor law. For example, DEFENDANTS did not produce  
2 PLAINTIFF's complete time records. Based on information and belief, DEFENDANTS failed and  
3 continues to fail to timely produce complete payroll and personnel records when requested by other  
4 Aggrieved Employees. Based on information and belief, DEFENDANTS failed and continue to fail  
5 to timely produce complete time, pay, and personnel records when requested by other Aggrieved  
6 Employees.

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

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

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

1 laws.

2       106. **Unreimbursed Business Expenses.** Based on information and belief,  
3 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses  
4 as a direct consequence of the performance of their job duties without providing reimbursement, in  
5 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other  
6 Aggrieved Employees were improperly required to provide and maintain work tools that are  
7 supposed to be the responsibility of the employer.

8       107. Based on information and belief, DEFENDANTS shifted the costs of doing business  
9 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited  
10 to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of Aggrieved  
11 Employees' personal cell phones/mobile devices, internet and/or data usage for work-related  
12 purposes, including but not limited to, to receive and respond to work-related messages and/or phone  
13 calls.

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

18       109. For example, DEFENDANTS required PLAINTIFF to use his personal cell phone /  
19 mobile device for work, including but not limited to, making and/or responding to work-related calls  
20 and/or messages, however, DEFENDANTS did not provide PLAINTIFF with any and/or full  
21 reimbursement for the business expenses PLAINTIFF incurred in connection therewith.

22       110. For example, PLAINTIFF was regularly required to respond to work-related calls  
23 and/or messages on his personal cell phone / mobile device, however, DEFENDANTS failed to  
24 provide PLAINTIFF with any and/or full reimbursement for the business expenses PLAINTIFF  
25 incurred in connection with being required to use his personal cell phone / mobile device for work,  
26 including but not limited to, increased data plan charges.

27       111. Based on information and belief, Aggrieved Employees were not reimbursed for the  
28 cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform

1 their assigned job duties and/or for the costs of purchasing and/or maintaining work  
2 uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

3 112. For example, DEFENDANTS required PLAINTIFF to purchase and/or maintain  
4 uniforms/work clothing/work shoes and/or protective equipment and/or safety gear, including  
5 without limitation, non-slip shoes, however, DEFENDANTS failed to provide PLAINTIFF with  
6 any and/or full reimbursement for the business expenses PLAINTIFF incurred in connection with  
7 being required to purchase and/or maintain DEFENDANTS' required uniforms/work clothing/work  
8 shoes and/or protective equipment and/or safety gear.

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

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

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

24 116. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement  
25 for all reasonable expenses associated with carrying out their duties required that Aggrieved  
26 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section  
27 2802.

28 117. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,  
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1 provides as follows:

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

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

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

20        121. **Violation of California Day of Rest Law.** Under California law, every employee in  
21 California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" its  
22 employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor  
23 Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

24        122. Based on information and belief, DEFENDANTS have and continue to have a  
25 uniform policy and practice of requiring Aggrieved Employees to work at least seven days  
26 consecutively in a workweek, in violation of including but not limited to, Labor Code Section  
27 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were  
28 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in

1 violation of California law, including but not limited to Labor Code Section 551.

2       123.   **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed  
3 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS  
4 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the  
5 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the  
6 accrued sick leave hours on the correct number of hours worked (as a result of the  
7 rounding/automatic deduction policies and practices for meal periods and/or shift start and end  
8 times/other required off-the-clock work including but not limited to unpaid meal periods) and by  
9 failing to incorporate multiple rates of pay and/or all 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       124.   Upon information and belief, DEFENDANTS further failed to place PLAINTIFF  
13 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their  
14 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,  
15 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to  
16 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.  
17 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of  
18 used sick leave and the balance of paid sick leave.

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

25       126.   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.

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

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

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

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

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

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

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

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

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

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

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

20           **136.** For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck  
21 for at least approximately twenty-four (24) hours following PLAINTIFF's date of termination, and  
22 PLAINTIFF's late final paycheck was devoid of all wages owed, including but not limited to, all  
23 owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or  
24 paid time off wages at the properly accrued rates, (including but not limited to, all owed vacation  
25 pay/paid time off paid at the final rate including non-discretionary compensation, including but not  
26 limited to, shift differentials).

27           **137.** Based on further information and belief, DEFENDANTS failed to timely provide all  
28 owed wages immediately upon discharge of employment. Based on information and belief, at times,

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

7       **138. Unlawful Agreements-Unlawful Criminal History Inquiries.**

8       Unlawful Agreements.

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

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

26       141. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a  
27 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section  
28 432.5.

1           142.   Unlawful Inquires into Criminal History

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

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

11           Unlawful PAGA Waiver

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

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

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

26           148.   Upon information and belief, DEFENDANTS required Aggrieved Employees to  
27 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By  
28 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS

1 required written agreement to an unlawful provision as a condition of employment which is a  
2 violation of labor code section 432.5.

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

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

14  
15                                   **FIRST CAUSE OF ACTION**  
16 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**  
17 **2698, *ET SEQ.***  
18 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**  
19 **Defendants)**

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

21 **Failure to Keep Accurate Records**

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

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

1 154. DEFENDANTS' failure to keep "accurate and complete" payroll records for  
2 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all  
3 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under  
4 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and  
5 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay  
6 period during which the referenced statutes and Wage Order provisions were violated.<sup>2</sup>

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

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

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

23 157. Personnel Records. In addition to their right to time and pay records, employees, and  
24 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to

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25 <sup>2</sup> 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 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code  
2 section 432 further specifies that employers must furnish copies of all employment records bearing  
3 the employee's signature. Labor Code section 1198.5 also requires that the file be made available  
4 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days  
5 from the date the employer receives a written request." An employer's failure to comply within this  
6 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar  
7 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

8 158. Based on information and belief, DEFENDANTS fail to timely produce or make  
9 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant  
10 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject  
11 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

12 **Meal Period Violations**

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

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

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

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

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

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

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

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

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

1           168.   These unlawful meal period policies and practices result in violations of Labor Code  
2 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject  
3 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable  
4 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §  
5 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

6           **Rest Period Violations**

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

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

1 “onus is on the employer to clearly communicate the authorization and permission [to take rest  
2 periods] to its employees.”).

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

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

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

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

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

25 **Failure to Provide Suitable Resting Facilities**

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

1 work hours.”

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

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

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

16 **Minimum and Overtime Wage Violations**

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

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

1 consecutive day of work in a work week. *Ibid.*

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

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

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

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

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

28       187. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,

1 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS  
2 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC  
3 Wage Orders, section 20.

4 **Statutory Wage Violations**

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

16 **Refusal to Make Payment**

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

25 **Standard Conditions of Labor Violations**

26 \_\_\_\_\_  
27 <sup>3</sup> 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           190. Together, Labor Code sections 1198 and 1199 make unlawful any employment of  
2 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,  
3 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including  
4 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS’  
5 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,  
6 minimum/overtime wages and other violations described herein result in separate violations of  
7 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections  
8 1197.1 and 2699.

9           **Business Expense Violations**

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

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

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

28           194. As described above, PLAINTIFF and the Aggrieved Employees were improperly

1 required to pay for business expenses that are legally the responsibility of the employer.

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

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

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

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

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

20 **Wage Statement Violations**

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

1 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

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

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

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

27       204. Based on information and belief, wage statements issued by DEFENDANTS failed  
28 to list all applicable hourly rates in effect during the pay period and the corresponding number of

1 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor  
2 Code section 226(a)(9).

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

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

9 207. DEFENDANTS' failure to accurately list all hours worked on all wage statements  
10 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved  
11 Employees over whether they received all wages owed to them.

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

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

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

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

1           212.   These violations subject DEFENDANTS to civil penalties under Labor Code § 226.  
2 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period  
3 during which the statute provisions were violated. <sup>4</sup>

4           **Unlawful Deductions**

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

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

17           **Reporting Time Pay Violations**

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

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

27           217.   Aggrieved Employees were not paid reporting time wages in accordance with

28 <sup>4</sup> Labor Code § 226.3 (establishing that the civil penalty is ~~40~~ per employee per violation”).

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

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

10 **Seating Violations**

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

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

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

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

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

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

28 223. Moreover, based on information and belief, the nature of the work reasonably

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

5         224. The Aggrieved Employees worked in various positions. The nature of Aggrieved  
6 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide  
7 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section  
8 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting  
9 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each  
10 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a  
11 separate civil penalty.

12         **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

28           **Untimely Payment of Final Wages**

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

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

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

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

23           **Unlawful Agreements/ Unlawful Criminal History Inquiries**

24           239. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall  
25 require any employee or applicant for employment to agree, in writing, to any term or condition  
26 which is known by such employer...to be prohibited by law.” Based on information and belief,  
27 DEFENDANTS required Aggrieved Employees to agree in writing to unlawful conditions of  
28 employment including but not limited to, unlawful non-solicitation/non-compete agreements,

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

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

13         241. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a  
14 condition of employment, DEFENDANTS violated Labor Code section 432.5.

15         Unlawful Inquires into Criminal History

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

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

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

1 disclose arrests and/or convictions as a condition of employment.

2 Unlawful PAGA Waiver

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

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

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

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

22 Violation of Labor Code Section 432.6

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

27 250. Labor Code Section 432.6(a) provides: “[A] person shall not, as a condition of  
28 employment, continued employment, or the receipt of any employment-related benefit, require any

1 applicant for employment or any employee to waive any right...”

2 251. Labor Code Section 432.6(b) provides in pertinent part:

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

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

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

13 254. Pursuant to Labor Code Sections 2100–2112, employers with one hundred (100) or  
14 more employees at a single warehouse distribution center, or one thousand (1,000) or more  
15 employees at one or more warehouse distribution centers in California are required to provide  
16 nonexempt employees, upon hire, with a written description of each quota they are subject to (e.g.,  
17 quantified number of tasks to be performed or materials to be handled) within a defined period of  
18 time and any potential adverse employment action that may result from failure to meet the quota.  
19 Labor Code Section 2102 (see below) prohibits adverse employment actions against employees who  
20 fail to meet their quota if the quota was not properly disclosed to the employee and prohibits quotas  
21 that prevent an employee from taking his or her meal or rest breaks, use of restrooms, or that interfere  
22 with compliance with California’s occupational health and safety laws.

23 255. Labor Code Section 2101 provides:

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

1           257. Labor Code Section 2102 provides:

2           258. An employee shall not be required to meet a quota that prevents compliance with  
3 meal or rest periods, use of bathroom facilities, including reasonable travel time to and from  
4 bathroom facilities, or occupational health and safety laws in the Labor Code or division standards.  
5 An employer shall not take adverse employment action against an employee for failure to meet a  
6 quota that does not allow a worker to comply with meal and rest periods, or occupational health and  
7 safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been  
8 disclosed to the employee pursuant to Section 2101.

9           259. Labor Code Section 2104 provides in pertinent part:

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

15          261. (2) If a former employee requests a written description of the quotas to which they  
16 were subject and a copy of their own personal work speed data pursuant to paragraph (1), the  
17 employer shall provide 90 days of the former employee's quotas and personal work speed data for  
18 the 90 days prior to the date of the employee's separation from the employer.

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

22          263. Based on information and belief, during the relevant period, DEFENDANTS  
23 employed 100 or more Aggrieved Employees at a single warehouse distribution center and/or  
24 employed 1,000 or more Aggrieved Employees at one or more distribution centers in California  
25 rendering DEFENDANTS subject to the provisions of Labor Code Sections 2100-2112, during the  
26 relevant period.

27          264. Based on information and belief, DEFENDANTS had/have a policy and practice of  
28 failing to provide Aggrieved Employees, upon hire, with a written description of each quota they

1 are subject to (e.g., quantified number of tasks to be performed or materials to be handled) within a  
2 defined period of time and any potential adverse employment action that may result from failure to  
3 meet the quota. Based on further information and belief, DEFENDANTS had/have a policy and  
4 practice of subjecting Aggrieved Employees to quotas that prevented those Aggrieved Employees  
5 from taking their meal and rest periods and/or using bathroom facilities and/or interfered with  
6 compliance of California's occupational health and safety laws.

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

12 266. Based on information and belief, DEFENDANTS failed and continue to fail to timely  
13 produce upon written and/or oral request by current and/or former Aggrieved Employees of the  
14 belief that meeting a quota caused a violation of their right to a meal or rest period and/or required  
15 them to violate any occupational health and safety laws, a written description of each quota to which  
16 the employee is subject and/or a copy of the most recent 90 days of the Aggrieved Employee's own  
17 personal work speed data.

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

20 268. Under the provisions of PAGA and the above mentioned Labor Code sections,  
21 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,  
22 227.3, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1194,  
23 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2100-2112, 2802, 2810.5 and all applicable Wage  
24 Orders as well as all interpretations of these laws by California Courts and administrative bodies, as  
25 well as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following  
26 penalties:

- 27 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the  
28 relevant California Labor Code provisions listed herein only if permitted by the

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

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

9 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 14, 2024

**CROSNER LEGAL, PC**

By:   
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