

1 JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
2 BRANDON BROUILLETTE, ESQ. (SBN 273156)
bbrouillette@crosnerlegal.com
3 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
4 **CROSNER LEGAL, PC**
5 9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
6 Tel: (866) 276-7637
Fax: (310) 510-6429
7

8 Attorneys for Plaintiff SALVADOR RODRIGUEZ DE ANDA
on behalf of the State of California and all Aggrieved Employees
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SACRAMENTO**

12 SALVADOR RODRIGUEZ DE ANDA, on
behalf of the State of California and all
Aggrieved Employees,

13 Plaintiff,

14 v.
15

16 HORIZON AIR INDUSTRIES, INC., a
Washington Corporation; ALASKA
17 AIRLINES, INC., an Alaska Corporation;
18 and DOES 1-100, inclusive,

19 Defendants.
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ELECTRONICALLY FILED
Superior Court of California
County of Sacramento

08/16/2024

By: A. Mocanu Deputy

Case No.: **24CV016239**

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

1 Plaintiff, SALVADOR RODRIGUEZ DE ANDA, (“PLAINTIFF”), on behalf of the State
2 of California and all Aggrieved Employees (as defined below), hereby files this Complaint against
3 Defendants HORIZON AIR INDUSTRIES, INC., a Washington Corporation; ALASKA
4 AIRLINES, INC., an Alaska Corporation; and DOES 1-100, inclusive, (collectively referred to
5 herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
26 title(s) of ground service agent and/or a similar title(s) and/or job position(s) from in or around 2020
27 through in or around 2022 and from in or around November 2023 and continuing through the
28 present. PLAINTIFF worked for DEFENDANTS at DEFENDANTS’ Sacramento, California

1 location(s).

2 6. Defendant HORIZON AIR INDUSTRIES, INC. is a Washington Corporation that, at
3 all relevant times, was authorized to do business within the State of California and is doing business
4 in the State of California.

5 7. Defendant ALASKA AIRLINES, INC. is an Alaska Corporation that, at all relevant
6 times, was authorized to do business within the State of California and is doing business in the State
7 of California.

8 8. DEFENDANTS own, operate, manage and/or staff its employees to work at the
9 airport(s), facilities and/or other location(s) in California, including but not limited to the airport(s),
10 facilities in Sacramento, California, among cities in California. DEFENDANTS, through its various
11 locations, serve the aviation and/or transportation industry.¹

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

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

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¹ See <https://www.alaskaair.com/>. Last visited on August 13, 2024.

1 **JOINT LIABILITY**

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

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

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

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

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

17 15. For example, DEFENDANTS, and each of them, share the same principal place of
18 business and agent for service of process as provided to the California Secretary of State and based
19 on information and belief, maintain some of the same attorneys and/or human resources personnel
20 to oversee employment-related matters. Also, DEFENDANTS' wage statements for PLAINTIFF
21 identify Horizon Air Industries, Inc. as the name of the legal entity that is PLAINTIFF's employer.
22 However, DEFENDANTS' wage statements for PLAINTIFF also display the logo for Alaska
23 Airlines, and DEFENDANTS' personnel file for PLAINTIFF contains various employment-related
24 documents, including without limitation, safety policies, employment agreements and/or other
25 employment-related documents identify Alaska Airlines as the name of PLAINTIFF's employer.

26 16. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
27 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
28 time-keeping practices, meal and rest periods, reimbursement of business expenses and other

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

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

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

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

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

1 **PAGA ALLEGATIONS**

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

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

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

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

22 23. PLAINTIFF, on May 24, 2024, through counsel, gave written notice by online filing
23 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
24 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
25 in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via
26 certified mail.

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

1 Employees.

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

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

10 **FACTUAL ALLEGATIONS**

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

15 28. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
16 title(s) of ground service agent and/or a similar title(s) and/or job position(s) from in or around 2020
17 through in or around 2022 and from in or around November 2023 and continuing through the
18 present.

19 29. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Sacramento,
20 California location(s).

21 30. PLAINTIFF regularly worked at least approximately five (5) to twelve (12) hours
22 per shift, at least four (4) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time
23 counted by DEFENDANTS as hours worked.

24 31. PLAINTIFF was also compensated with non-discretionary compensation, including
25 but not limited to, non-discretionary bonus/incentive pay and/or shift differential pay and/or other
26 non-discretionary compensation.

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

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

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

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

18 25. For example, based on information and belief, at times, Aggrieved Employees were
19 required to complete pre-shift off-the-clock work tasks prior to being able to clock in for the start of
20 their shifts each day.

21 26. Based on information and belief, Aggrieved Employees were required to stand in
22 line behind other employees to access DEFENDANTS' time-keeping system and/or were required
23 to spend time reinitiating DEFENDANTS' time-keeping system before they could clock in for the
24 start of their shifts and/or after completing a purported meal period.

25 27. Based on information and belief, PLAINTIFF remained subject to DEFENDANTS'
26 control after completing work duties as a result of DEFENDANTS' placement of DEFENDANTS'
27 timeclocks being far from PLAINTIFF's work area(s), resulting in unpaid wages owed to
28 PLAINTIFF for time spent walking to and from DEFENDANTS' time clocks.

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

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

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

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

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

28 33. Based on information and belief, at times, DEFENDANTS' electronic employee

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

9 34. 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 35. 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 36. 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. Based on information and belief, DEFENDANTS failed to pay Aggrieved Employees
21 the applicable minimum wage for the county and/or city within which the Aggrieved Employee
22 worked in California.

23 37. Moreover, based on information and belief, DEFENDANTS failed to pay
24 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split
25 shifts during the relevant period.

26 38. For example, based on information and belief, at times, DEFENDANTS required
27 PLAINTIFF and/or other Aggrieved Employees to work two separate shifts in the same day. Based
28 on information and belief, DEFENDANTS failed to pay PLAINTIFF and/or other Aggrieved

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

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

21 40. Based in information and belief, DEFENDANTS implemented a time-rounding
22 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
23 compensable time because the time-rounding system implemented by DEFENDANTS would
24 almost always, if not always, result in understating actual compensable work time.

25 41. For example, as explained herein, DEFENDANTS issued wage statements to
26 PLAINTIFF that demonstrate DEFENDANTS rounded Aggrieved Employees' total hours worked
27 to at least the nearest tenth, quarter, half and/or whole hour during various, if not all pay periods,
28 resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the

1 underpayment of wages owed to PLAINTIFF.

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

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

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

16 45. 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 46. Based on information and belief, DEFENDANTS calculated the owed overtime
21 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
22 based on the minimum wage established for the cities and/or counties within which Aggrieved
23 Employees worked, resulting in the miscalculation and underpayment of overtime wages owed to
24 Aggrieved Employees who worked in cities and/or counties in California with minimum wage rates
25 above the California minimum wage rate.

26 47. For example, DEFENDANTS compensated PLAINTIFF with non-discretionary
27 compensation, including but not limited to, non-discretionary bonus/incentive pay, shift differential
28 pay and/or other non-discretionary compensation, which was not included in the regular rate of pay

1 for purposes of calculating the overtime rate of pay on wage statements issued to PLAINTIFF, for
2 including but not limited to, pay period(s) beginning on April 28, 2024 and ending on May 11, 2024.

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

5 49. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
6 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
7 and/or implemented in accordance with the requirements of California law and/or DEFENDANTS
8 failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws,
9 including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor
10 Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an
11 AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

12 50. (C) Election Procedures Election procedures for the adoption and repeal of
13 alternative

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

1 the criteria for an identifiable work unit in this subsection is met. (3) Prior to the secret ballot vote,
2 any employer who proposed to institute an alternative workweek schedule shall have made a
3 disclosure in writing to the affected employees, including the effects of the proposed arrangement
4 on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly
5 noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the
6 alternative workweek schedule. An employer shall provide that disclosure in a non- English
7 language, as well as in English, if at least five (5) percent of the affected employees primarily speak
8 that non-English language. The employer shall mail the written disclosure to employees who do not
9 attend the meeting. Failure to comply with this paragraph shall make the election null and void. (4)
10 Any election to establish or repeal an alternative workweek schedule shall be held at the work site
11 of the affected employees. The employer shall bear the costs of conducting any election held
12 pursuant to this section. Upon a complaint by an affected employee, and after an investigation by
13 the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral
14 third party to conduct the election. (5) Any type of alternative workweek schedule that is authorized
15 by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3)
16 of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of
17 the affected employees shall be required to reverse the alternative workweek schedule. The election
18 to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is
19 submitted to the employer, except that the election shall be held not less than 12 months after the
20 date that the same group of employees voted in an election held to adopt or repeal an alternative
21 workweek schedule. The election shall take place during regular working hours at the employees'
22 work site. If the alternative workweek schedule is revoked, the employer shall comply within 60
23 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may
24 grant an extension of time for compliance. (6) Only secret ballots may be cast by affected employees
25 in the work unit at any election held pursuant to this section. The results of any election conducted
26 pursuant to this section shall be reported by the employer to the Office of Policy, Research and
27 Legislation within 30 days after the results are final, and the report of election results shall be a
28 public document. The report shall include the final tally of the vote, the size of the unit, and the

1 nature of the business of the employer. (7) Employees affected by a change in the work hours
2 resulting from the adoption of an alternative workweek schedule may not be required to work those
3 new work hours for at least 30 days after the announcement of the final results of the election. (8)
4 Employers shall not intimidate or coerce employees to vote either in support of or in opposition to
5 a proposed alternative workweek.

6 52. No employees shall be discharged or discriminated against for expressing opinions
7 concerning the alternative workweek election or for opposing or supporting its adoption or repeal.
8 However, nothing in this section shall prohibit an employer from expressing his/her position
9 concerning that alternative workweek to the affected employees. A violation of this paragraph shall
10 be subject to Labor Code § 98 et seq.

11 53. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to
12 comply with the above procedures, and thus, failed to properly institute an alternative workweek for
13 the purpose of obtaining a lawful exemption from overtime premiums for its mandated alternative
14 workweek schedule. Based on information and belief, DEFENDANTS also failed to report the
15 results to the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the
16 purported election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage
17 Orders.

18 54. Moreover, to the extent there was an AWS that was properly adopted,
19 DEFENDANTS violated California's overtime laws as to Aggrieved Employees that were subject
20 to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the
21 agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee
22 to work fewer hours than those that are regularly scheduled by the agreement, the employer shall
23 pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's
24 regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is
25 required to work the reduced hours." See Section 3 of all applicable Wage Orders. Based on
26 information and belief, at times during Aggrieved Employees' respective employments by
27 DEFENDANTS, Aggrieved Employees worked subject to an alternative work week schedule.
28 Based on information and belief, at times, Aggrieved Employees that were subject to an AWS, were

1 sent home early and/or worked less hours than those that were scheduled under the AWS. On such
2 shortened shifts, Aggrieved Employees were entitled to overtime pay at 1.5 times the regular rate of
3 pay after the first eight hours of work. Instead, DEFENDANTS paid Aggrieved Employees their
4 base rate for all hours worked on the shortened shift(s) in violation of the alternative workweek
5 schedule, and in violation of California Labor Code section 510, the applicable Wage Order, and
6 Labor Code section 1198. As such, Aggrieved Employees that were subject to an AWS were also
7 deprived of all owed overtime wages when required to work shortened shifts.

8 55. DEFENDANTS' conduct described above results in violations of Labor Code §§
9 510, 511, and 1198-1199, and the Applicable Wage Orders.

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

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

21 58. Based on information and belief, Aggrieved Employees were frequently interrupted
22 during purported meal periods and/or had meal periods cut short and/or restricted to
23 DEFENDANTS' premises due to the need to continue assigned job duties.

24 59. For example, based on information and belief, Aggrieved Employees were at times
25 forced to take late meal periods in order to complete assigned job duties.

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

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

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

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

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

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

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

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

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

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

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

14 70. For example, DEFENDANTS compensated PLAINTIFF with non-discretionary
15 compensation, including but not limited to, non-discretionary bonus/incentive pay, shift differential
16 pay and/or other non-discretionary compensation, which was not included in the regular rate of pay
17 for purposes of calculating the meal period penalty on wage statements issued to PLAINTIFF, for
18 including but not limited to, pay period(s) beginning on April 28, 2024 and ending on May 11, 2024.

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

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

27 73. Based on information and belief, DEFENDANTS did not have a have a compliant
28 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in

1 practice.

2 74. For example, based on information and belief, Aggrieved Employees were frequently
3 if not always unable to take compliant rest periods due to their need to complete assigned job duties
4 and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported
5 rest periods restricted to DEFENDANTS' premises.

6 75. For example, PLAINTIFF was frequently if not always unable to take compliant rest
7 periods due to PLAINTIFF's need to complete assigned job duties and/or was unable to take a net
8 ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to
9 DEFENDANTS' premises.

10 76. Based on information and belief, DEFENDANTS failed to authorize and permit rest
11 periods that were a "net" ten minutes in a suitable rest area, and instead, to the extent rest periods
12 were provided, DEFENDANTS limited Aggrieved Employees to only ten-minute rest periods,
13 requiring them to be back at their workstations within ten minutes of leaving their workstations, in
14 violation of California rest period law.

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

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

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

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

27 81. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
28 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in

1 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
2 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
3 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
4 shift differential pay, and/or other non-discretionary compensation into the regular rate of
5 compensation for purposes of calculating the owed rest period premium.

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

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

22 84. Based on information and belief, wage statements issued by DEFENDANTS failed
23 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid, in
24 violation of including but not limited to, Labor Code section 226(a)(2) and/or Labor Code section
25 226(a)(6).

26 85. For example, based on information and belief, at times, DEFENDANTS issued wage
27 statements to Aggrieved Employees containing payment for hours worked during previous pay
28 periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate

1 pay period for that retroactive pay, further failing to list the total hours worked for the pay period,
2 including but not limited to, the total hours worked for the pay period the retroactive pay corresponds
3 with.

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

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

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

15 89. For example, DEFENDANTS compensated PLAINTIFF with non-discretionary
16 compensation, including but not limited to, non-discretionary bonus/incentive pay, shift differential
17 pay and/or other non-discretionary compensation, which was not included in the regular rate of pay
18 for purposes of calculating the meal period penalty and the overtime rate of pay on wage statements
19 issued to PLAINTIFF, for including but not limited to, pay period(s) beginning on April 28, 2024
20 and ending on May 11, 2024.

21 90. As such, DEFENDANTS issued wage statements to Aggrieved Employees that did
22 not include all of the statutorily required information, including but not limited to, the correct name
23 and/or address of the legal entity that is the employer.

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

27 92. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved
28 Employees that were not accurate and did not include all of the statutorily required information. As

1 such, DEFENDANTS violated Labor Code section 226.

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

7 94. Upon separation of employment, Aggrieved Employees' final paychecks were not
8 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
9 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
10 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
11 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
12 accrued rates.

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

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

27 97. Based on information and belief, DEFENDANTS shifted the costs of doing business
28 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited

1 to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of Aggrieved
2 Employees' personal cell phones/mobile devices, internet and/or data usage for work-related
3 purposes, including but not limited to, to receive and respond to work-related messages and/or phone
4 calls. For example, based on information and belief, Aggrieved Employees were required to receive
5 and respond to work-related calls and/or messages from supervisors and/or other employees
6 regarding scheduling and/or other work tasks but were not reimbursed by DEFENDANTS at all
7 and/or in full for these business expenses.

8 98. For example, DEFENDANTS required PLAINTIFF to regularly use his personal cell
9 phone/mobile device for work, including but not limited to, to receive and respond to work-related
10 calls and/or messages regarding work scheduling and/or other work tasks, however,
11 DEFENDANTS failed to provide PLAINTIFF with any and/or full reimbursement for the business
12 expenses PLAINTIFF was required to incur in connection with being required to use his personal
13 cell phone/mobile device for work, including but not limited to, increased data plan charges.

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

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

24 101. Based on information and belief, DEFENDANTS failed to reimburse Aggrieved
25 Employees for all parking-related expenses incurred by Aggrieved Employees in connection with
26 carrying out the job duties assigned to them by DEFENDANTS.

27 102. As explained above, based on information and belief, Aggrieved Employees were
28 not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost

1 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
2 protective/safety gear.

3 103. As explained above, based on information and belief, Aggrieved Employees were
4 not reimbursed for the cost of using their personal phone(s) for work-related purposes and/or the
5 cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
6 protective/safety gear and/or cost of purchasing and/or maintaining their own hand tools and/or
7 equipment required to perform their assigned job duties.

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

10 105. Based on information and belief, DEFENDANTS regularly failed to reimburse and
11 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
12 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
13 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
14 assigned by DEFENDANTS.

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

19 107. **Cooldown Recovery Period Violations.** California Code of Regulations, Title 8,
20 section 3395 mandates that all employers with "outdoor places of employment" implement a heat
21 illness prevention program that includes, among other requirements, providing workers "cool-
22 down" periods of at least five minutes in the shade. Specifically, section 3395 provides that
23 "employees shall be allowed and encouraged to take a cool-down rest in the shade for a period of
24 no less than five minutes at a time when they feel the need to do so to protect themselves from
25 overheating" and that "such access to shade shall be permitted at all times." Under California Labor
26 Code section 226.7, if an employer fails to provide an employee a recovery period, the employer
27 shall pay the employee one additional hour of pay at the employee's regular rate of compensation
28 for each workday that the meal or rest or recovery period is not provided.

1 108. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
2 required to spend multiple hours at a time outdoors in significantly high temperature heat conditions.
3 DEFENDANTS failed to provide proper heat illness prevention training and/or heat illness
4 policies/practices/programs as required by California's Heat Illness Prevention statute, Title 8
5 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
6 California's Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
7 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
8 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
9 shade for extended periods of time. In addition, DEFENDANTS, failed to pay PLAINTIFF and
10 other Aggrieved Employees with an additional hour of pay at PLAINTIFF's regular rate of pay for
11 each missed cooldown recovery period.

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

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

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

27 39. DEFENDANTS' failure to provide suitable resting facilities to Aggrieved
28 Employees violated and continues to violate the applicable Wage Order, section 13(B) and the

1 California Labor Code, including but not limited to section 1198.

2 40. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
3 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
4 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
5 from Aggrieved Employees paychecks during the relevant period including without limitation,
6 deducting business costs and/or deducting wages for purported overpayments from previous pay
7 periods and/or unlawfully ducting wages for negligently damaged property and/or unlawfully
8 deducting transaction fees/pay/money card fees and/or deducting costs advanced by
9 DEFENDANTS. Such a practice is in violation of including but not limited to, Labor Code Sections
10 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

15 42. Based on information and belief, DEFENDANTS have and continue to have a
16 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
17 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
18 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
19 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
20 violation of California law, including but not limited to Labor Code Section 551.

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

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

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

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

24 47. Based on information and belief, throughout the relevant time period,
25 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
26 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
27 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
28 prior to their respective separations, for as on several occasions thereafter, he or she would have

1 been entitled to use the banked sick leave and earn appropriate compensation.

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

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

11 50. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
12 provides as follows:

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

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

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

1 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
2 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

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

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

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

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

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

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

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

26 59. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
27 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
28 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or

1 failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation
2 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
3 limited to, shift differentials) to Aggrieved Employees upon separation of employment, in violation
4 of California law, including but not limited to, Labor Code section 227.3.

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

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

14 **62. Unlawful Agreements-Unlawful Criminal History Inquiries.**

15 Unlawful Agreements.

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

25 **64.** Labor Code section 432.6(a), provides that “a person shall not, as a condition of
26 employment, continued employment, or the receipt of any employment-related benefit, require any
27 applicant for employment or any employee to waive any right...”Based on information and belief,
28 DEFENDANTS required Aggrieved Employees to sign meal period waivers that were universally

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

5 65. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
6 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
7 432.5.

8 Unlawful Inquires into Criminal History

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

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

18 Unlawful PAGA Waiver

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

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

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

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

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

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

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

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

26 74. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

27 **Failure to Keep Accurate Records**

28 75. California Labor Code § 1174 requires employers to keep "accurate and complete"
payroll records showing, among other things, the hours worked daily by all non-exempt employees.
All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the

1 times during which all owed meal periods were provided each day.

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

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

13 **Meal Period Violations**

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

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

22 80. Employers covered by any and all applicable IWC Wage Orders have an obligation
23 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
24 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is

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

1 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
2 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
3 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
4 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
5 provided”).

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

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

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

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

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

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

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

11 **Rest Period Violations**

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

26 89. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
27 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
28 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest

1 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
2 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
3 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
4 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
5 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
6 “onus is on the employer to clearly communicate the authorization and permission [to take rest
7 periods] to its employees.”).

8 90. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
9 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
10 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
11 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
12 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
13 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

27 94. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
28 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties

1 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

2 **Cooldown Recovery Period Violations**

3 95. California Code of Regulations, Title 8, section 3395 mandates that all employers
4 with “outdoor places of employment” implement a heat illness prevention program that includes,
5 among other requirements, providing workers “cool-down” periods of at least five minutes in the
6 shade. Specifically, section 3395 provides that “employees shall be allowed and encouraged to take
7 a cool-down rest in the shade for a period of no less than five minutes at a time when they feel the
8 need to do so to protect themselves from overheating” and that “such access to shade shall be
9 permitted at all times.” Under California Labor Code section 226.7, if an employer fails to provide
10 an employee a recovery period, the employer shall pay the employee one additional hour of pay at
11 the employee’s regular rate of compensation for each workday that the meal or rest or recovery
12 period is not provided.

13 96. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
14 required to spend multiple hours at a time outdoors in significantly high temperature heat conditions.
15 DEFENDANTS failed to provide proper heat illness prevention training and/or heat illness
16 policies/practices/programs as required by California’s Heat Illness Prevention statute, Title 8
17 Section 3395(d). DEFENDANTS failed to provide adequate access to drinking water as required by
18 California’s Heat Illness Prevention statute, Title 8 Section 3395(c). Moreover, DEFENDANTS
19 maintained a policy and practice of not permitting necessary time for cooldown recovery breaks,
20 and as a result, Aggrieved Employees were required to remain outdoors with little to no access to
21 shade for extended periods of time. In addition, DEFENDANTS, failed to pay PLAINTIFF and
22 other Aggrieved Employees with an additional hour of pay at PLAINTIFF’s regular rate of pay for
23 each missed cooldown recovery period.

24 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

15 **Minimum and Overtime Wage Violations**

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

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

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

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

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

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

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

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

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

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

12 **Statutory Wage Violations**

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

24 **Refusal to Make Payment**

25 112. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
26 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
27 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
28 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each

1 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
2 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
3 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
4 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

5 **Standard Conditions of Labor Violations**

6 113. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
7 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
8 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
9 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
10 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
11 minimum/overtime wages and other violations described herein result in separate violations of
12 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
13 1197.1 and 2699.

14 **Business Expense Violations**

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

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

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

1 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
2 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
3 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

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

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

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

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

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

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

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

28 **Wage Statement Violations**

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

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

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

28 126. As explained above, wage statements issued by DEFENDANTS failed to list the
44
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
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1 “total hours worked” by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
2 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
3 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
4 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
5 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
6 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

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

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

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

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

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

28 134. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and Aggrieved

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

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

12 **Violation of California Day of Rest Law.**

13 136. Under California law, every employee in California is "entitled" to "one day's rest
14 [from labor] in seven"; and, no employer may "cause" its employees "to work more than six days in
15 seven." *See* Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of
16 the foregoing sections is a misdemeanor.

17 137. Based on information and belief, DEFENDANTS have and continue to have a
18 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
19 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
20 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
21 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
22 violation of California law, including but not limited to Labor Code Section 551.

23 **Unlawful Deductions**

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

28 ⁴ Labor Code § 226.3 (establishing that the civil penalty is ~~40~~ per employee per violation").

1 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
2 Section 2699.

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

9 **Reporting Time Pay Violations**

10 140. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

1 **Seating Violations**

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

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

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

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

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

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

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

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

1 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
2 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
3 Aggrieved Employee, results in a separate civil penalty.

4 **Sick Leave Violations**

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

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

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

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

25 154. 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.

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

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

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

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

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

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

20 **Untimely Payment of Final Wages**

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

28 161. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages

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

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

12 163. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
13 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
14 256.

15 **Violation of Labor Code Section 208**

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

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

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

26 *Unlawful Agreements.*

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

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

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

16 168. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
17 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
18 432.5.

19 Unlawful Inquires into Criminal History

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

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

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

6 Unlawful PAGA Waiver

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

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

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

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

27 Violation of Labor Code Section 432.6

28 176. Based on information and belief, DEFENDANTS required Aggrieved Employees to

1 sign meal period waivers that were universally signed as a condition of employment, including but
2 not limited to, during the onboarding process. Further, these invalid waivers are otherwise unlawful
3 under Labor Code section 432.6.

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

7 178. Labor Code Section 432.6(b) provides in pertinent part:

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

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

17 181. Under the provisions of PAGA and the above mentioned Labor Code sections,
18 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
19 226.7, 227.3, 245-248.6, 256, 432.5, 432.6, 432.7, 510, 512, 551, 553, 558, 558.1, 1174, 1174.5,
20 1194, 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as
21 well as all interpretations of these laws by California Courts and administrative bodies, as well as
22 any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
23 penalties:

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

27 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
28 violations without a civil penalty recoverable under the PAGA, all in the default

1 amounts provided by Labor Code section 2699(f).

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

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

7 **PRAYER FOR RELIEF**

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

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

17 Dated: August 16, 2024

CROSNER LEGAL, PC

18
19 By: 

20 Jamie K. Serb, Esq.
21 Brandon Brouillette, Esq.
22 Zachary M. Crosner, Esq.
23 Attorneys for Plaintiff
24 SALVADOR RODRIGUEZ DE ANDA
25
26
27
28