

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

7 Fax: (310) 510-6429

Per local Rule, This case is assigned to
Judge Treat, Charles S, for all purposes.

8 Attorneys for Plaintiff LEIGHA SCHARSCH

on behalf of the State of California and all Aggrieved Employees

SUMMONS ISSUED

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF CONTRA COSTA**

11 LEIGHA SCHARSCH, on behalf of the State
12 of California and all Aggrieved Employees,

13 Plaintiff,

14 v.

15 VICI COLLECTION, LLC, a Delaware
16 Limited Liability Company; and DOES 1-
17 100, inclusive,

18 Defendants.

Case No.: C24-02031

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

1 Plaintiff, LEIGHA SCHARSCH, (“PLAINTIFF”), on behalf of the State of California and
2 all Aggrieved Employees (as defined below) hereby files this Complaint against Defendants VICI
3 COLLECTION, LLC, a Delaware Limited Liability; and DOES 1-100, inclusive, (collectively
4 referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges
5 as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

23 **THE PARTIES**

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

26 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
27 DEFENDANTS as a non-exempt employee with a job title(s) of warehouse worker, warehouse
28 associate, returns associate and/or a similar title(s) and/or job position(s) from in or around

1 November 2021 through in or around October 2023. PLAINTIFF worked for DEFENDANTS at
2 DEFENDANTS' Solano, California location(s).

3 6. Defendant VICI COLLECTION, LLC is Delaware Limited Liability Company that,
4 at all relevant times, was authorized to do business within the State of California and is doing
5 business in the State of California.

6 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
7 warehouse distribution centers, warehouses, facilities and/or other location(s) in California,
8 including but not limited to, the warehouse distribution centers, warehouses, facilities and/or other
9 locations in Solano, California. DEFENDANTS, through its various locations, serve the
10 manufacturing, warehousing and/or logistics industry.¹

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

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

27 **JOINT LIABILITY**

28 ¹ See <https://www.vicicollection.com/>. Last visited on July 29, 2024.

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

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

25 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
26 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
27 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
28 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same

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

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

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

1 collectively would evaluate their wage rates.

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

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

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

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

19 **PAGA ALLEGATIONS**

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

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

28 20. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
6
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

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

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

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

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

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

28 **FACTUAL ALLEGATIONS**

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

5 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
6 DEFENDANTS as a non-exempt employee with a job title of warehouse associate and/or a similar
7 title(s) and/or job position(s) from in or around November 2021 through in or around October 2023.
8 PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Fairfield, California location(s).
9 PLAINTIFF regularly worked at least eight (8) hours per day, at least five (5) days per week.

10 27. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
11 DEFENDANTS as hours worked.

12 28. Based on information and belief, Aggrieved Employees were also compensated with
13 non-discretionary compensation, including but not limited to, shift differential pay, non-
14 discretionary bonuses/incentive pay and/or other non-discretionary compensation.

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

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

24 31. Based on information and belief, DEFENDANTS implemented a policy and/or
25 practice of rounding meal period start and end times and/or automatically deducting at least thirty
26 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
27 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
28 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving

1 PLAINTIFF and Aggrieved Employees of all wages owed.

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

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

13 34. Based on information and belief, at times, Aggrieved Employees were required to
14 stand in line behind other employees to access DEFENDANTS' time-keeping system and/or were
15 required to spend time reinitiating DEFENDANTS' time-keeping system before they could clock
16 in for the start of their shifts and/or after completing a purported meal period. For example, upon
17 arriving at work, but prior to clocking in for the start of PLAINTIFF's shift each workday,
18 PLAINTIFF was required to stand in line behind other employees, resulting in at least approximately
19 one (1) to five (5) minutes of pre-shift off-the-clock work during most if not all shifts PLAINTIFF
20 worked during PLAINTIFF's employment, further resulting in DEFENDANTS' failure to
21 compensate PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF.

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

26 36. For example, based on information and belief, DEFENDANTS required Aggrieved
27 Employees to clock out for the end of their shifts but to continue working due to the need to
28 return/maintain tools, clean and/or organize their work stations/areas, provide shift status updates

1 and/or debriefings and/or participate in work meetings, respond to work-related communications
2 and/or perform other work tasks off-the-clock, resulting in the underpayment of minimum wages
3 and overtime wages owed to Aggrieved Employees.

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

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

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

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

25 41. Based on information and belief, Aggrieved Employees were also pressured to
26 complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals
27 and expectations.

28 42. For example, based on information and belief, Aggrieved Employees were required

1 to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-
2 related phone calls and/or messages they received to their phones and/or mobile devices and were
3 required to respond to, including but not limited to, communications from supervisors regarding
4 scheduling and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved
5 Employees.

6 43. Based on information and belief, DEFENDANTS failed to pay Aggrieved
7 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
8 Employee worked in California.

9 44. Moreover, based on information and belief, DEFENDANTS failed to pay
10 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split
11 shifts during the relevant period.

12 45. For example, based on information and belief, at times, DEFENDANTS required
13 PLAINTIFF and/or other Aggrieved Employees to work two separate shifts in the same day. Based
14 on information and belief, DEFENDANTS failed to pay PLAINTIFF and/or other Aggrieved
15 Employees split shift compensation whenever PLAINTIFF's and/or other Aggrieved Employees'
16 work schedules were interrupted by non-paid non-working periods established by DEFENDANTS,
17 which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage
18 orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be
19 paid in addition to the minimum wage for that workday...). See, also, Cal. Code Regs. Tit. 8, §
20 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid
21 in addition to the minimum wage for that workday, except when the employee resides at the place
22 of employment).

23 46. DEFENDANTS also failed to separately itemize these split shift premium wages on
24 PLAINTIFF's and/or other Aggrieved Employees' wage statements, in violation of Labor Code
25 sections 510, 1194 and all applicable IWC Wage Orders. See,
26 https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on
27 the pay stub provided to the employee, and it should be shown as a separate category such as "Split
28 Shift Premium" and should not be lumped into another category such as wages, bonus, etc.

1 DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF
2 and/or other Aggrieved Employees on their wage statements.

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

8 48. Based in information and belief, DEFENDANTS implemented a time-rounding
9 system that as applied systematically deprived Aggrieved Employees of compensable time because
10 the time-rounding system implemented by DEFENDANTS would almost always, if not always,
11 result in understating actual compensable work time.

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

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

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

27 52. Based on information and belief, DEFENDANTS failed to incorporate all non-
28 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive

1 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
2 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
3 wages owed to PLAINTIFF and other Aggrieved Employees.

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

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

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

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

23 57. Based on information and belief, DEFENDANTS implemented policies and/or
24 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
25 during unpaid meal periods.

26 58. Based on information and belief, DEFENDANTS required Aggrieved Employees to
27 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
28 into account when scheduling meal periods for Aggrieved Employees. Based on information and

1 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

2 59. Based on information and belief, despite DEFENDANTS' failure to provide lawful
3 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
4 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
5 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
6 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
7 Employees did not receive lawful meal periods.

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

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

12 62. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
13 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
14 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
15 did DEFENDANTS have any sort of compliant policy in practice.

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

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

26 65. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
27 additional hour of wages at their respective regular rates of compensation for each workday a lawful
28 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for

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

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

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

13 **68.** Based on information and belief, DEFENDANTS did not have a have a compliant
14 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
15 practice.

16 **69.** For example, based on information and belief, NON-EXEMPT AGGRIEVED
17 EMPLOYEES were at times unable to take compliant rest periods due to their need to complete
18 assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area
19 and/or had purported rest periods restricted to DEFENDANTS' premises.

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

27 **71.** Based on information and belief, any purported rest periods were interrupted, cut
28 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of

1 their job duties, and/or commentary from supervisors pressuring them to skip rest periods
2 completely and/or take non-compliant rest periods.

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

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

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

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

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

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

1 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
2 vehicles.

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

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

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

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

24 82. Based on information and belief, wage statements issued by DEFENDANTS failed
25 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid, in
26 violation of including but not limited to, Labor Code section 226(a)(2) and/or Labor Code section
27 226(a)(6).

28 83. For example, based on information and belief, at times, DEFENDANTS issued wage

1 statements to Aggrieved Employees containing payment for hours worked during previous pay
2 periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate
3 pay period for that retroactive pay, further failing to list the total hours worked for the pay period,
4 including but not limited to, the total hours worked for the pay period the retroactive pay corresponds
5 with.

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

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

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

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

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

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

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

1 from Aggrieved Employees paychecks during the relevant period including without limitation,
2 deducting business costs and/or deducting wages for purported overpayments from previous pay
3 periods and/or unlawfully deducting wages for negligently damaged property and/or unlawfully
4 deducting transaction fees/pay/money card fees and/or deducting costs advanced by
5 DEFENDANTS. Such a practice is in violation of including but not limited to, Labor Code Sections
6 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

11 92. For example, PLAINTIFF, through counsel, sent a written request for payroll and
12 personnel records to DEFENDANTS, on or around the following dates: May 20, 2024. Yet,
13 DEFENDANTS failed to timely produce complete records within the time periods delineated by
14 California labor law. For example, DEFENDANTS failed to produce wage statements and/or time
15 records for PLAINTIFF.

16 93. Based on information and belief, DEFENDANTS failed and continues to fail to
17 timely produce complete payroll and personnel records when requested by other Aggrieved
18 Employees. Based on information and belief, DEFENDANTS failed and continue to fail to timely
19 produce complete time, pay, and personnel records when requested by other Aggrieved Employees.

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

28 95. DEFENDANTS have failed and continue to fail to keep accurate and complete

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

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

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

21 **98.** Based on information and belief, DEFENDANTS shifted the costs of doing business
22 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
23 to, to receive and respond to work-related messages and/or phone calls. For example, based on
24 information and belief, Aggrieved Employees were required to receive and respond to work-related
25 calls and/or messages from supervisors and/or other employees regarding scheduling and/or other
26 work tasks but were not reimbursed by DEFENDANTS at all and/or in full for these business
27 expenses.

28 **99.** Based on information and belief, Aggrieved Employees were not reimbursed for the
20
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform
2 their assigned job duties and/or for the costs of purchasing and/or maintaining work
3 uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

4 100. For example, DEFENDANTS required PLAINTIFF to supply her own non-slip
5 shoes and/or other uniforms, work clothing/work shoes and/or protective and/or safety gear,
6 however, DEFENDANTS failed to provide PLAINTIFF with any and/or full reimbursement for the
7 business expenses PLAINTIFF incurred in connection with being required to purchase and/or
8 maintain DEFENDANTS' required uniforms, work clothes, work shoes, protective and/or safety
9 gear.

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

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

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

23 104. Based on information and belief, DEFENDANTS regularly failed to reimburse and
24 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
25 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
26 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
27 assigned by DEFENDANTS.

28 105. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement

1 for all reasonable expenses associated with carrying out their duties required that Aggrieved
2 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
3 2802.

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

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

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

27 109. Upon information and belief, DEFENDANTS failed and continue to fail to comply
28 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with

1 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
2 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
3 wages.

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

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

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

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

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

28 115. **Seating Violations.** Per section 14(A-B) of all applicable IWC Wage Orders,

1 employees shall be provided with suitable seats when the nature of the work reasonably permits the
2 use of seats and when they are not actively engaged in the work duties that would not permit them
3 to be seated.

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

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

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

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

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

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

23 120. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
24 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
25 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
26 failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation
27 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
28 limited to, shift differentials) to Aggrieved Employees upon separation of employment, in violation

1 of California law, including but not limited to, Labor Code section 227.3.

2 **121. 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 **122.** 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 **123.** For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck
14 upon separation of employment, and PLAINTIFF's late final paycheck once received was devoid
15 of all wages owed as it is devoid of all owed minimum wages, overtime wages, premium wages,
16 vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including
17 but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
18 discretionary compensation, including but not limited to, shift differentials).

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

27 **125. Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every
28 employee who is discharged shall be paid at the place of discharge, and every employee who quits

1 shall be paid at the office or agency of the employer in the county where the employee has been
2 performing labor. All payments shall be made in the manner provided by law.

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

8 127. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

9 Unlawful Agreements.

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

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

27 130. Based on information and belief, DEFENDANTS also required Aggrieved
28 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct

1 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
2 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
3 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

4 131. Based on further information and belief, DEFENDANTS knew that requiring
5 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
6 condition of obtaining and/or holding employment was unlawful.

7 132. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
8 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
9 432.5.

10 Unlawful Inquires into Criminal History

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

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

20 Unlawful PAGA Waiver

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

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

1 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

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

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

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

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

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

28 141. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

Failure to Keep Accurate Records

142. California Labor Code § 1174 requires employers to keep “accurate and complete”

1 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
2 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
3 times during which all owed meal periods were provided each day.

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

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

15
16 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

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

23 146. Section (b) of Labor Code section 226 further requires employers to "afford current
24 and former employees the right to inspect or receive a copy of records pertaining to their

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 employment upon reasonable request to the employer.” Section (c) of Labor Code section 226
2 provides that, “an employer who receives a written or oral request to inspect or receive a copy of
3 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
4 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
5 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
6 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
7 the employer. Lab. Code section 226(f).

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

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

21 **Meal Period Violations**

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

27 150. Employers must also provide employees with a second duty-free, uninterrupted thirty
28 (30) minute meal period when an employee works more than (10) hours in a workday, and it must

1 be provided before the end of the 10th hour of work. *Ibid.*

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

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

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

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

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

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

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

10 158. These unlawful meal period policies and practices result in violations of Labor Code
11 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
12 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
13 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
14 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

15 **Rest Period Violations**

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

1 applicable IWC Wage Order, §12(B).

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

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

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

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

25 164. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
26 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
27 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
28 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including

1 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
2 the regular rate of compensation for purposes of determining the owed rest period premium.

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

6 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

25 **Minimum and Overtime Wage Violations**

26 170. California law provides that employees in California must be paid for all hours
27 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
28 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.

1 The minimum wage standard applies to each hour employees worked for which they were not paid.
2 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
3 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
4 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

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

18 173. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
19 Aggrieved Employees for all hours worked.

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

26 175. Based on information and belief, DEFENDANTS calculated the owed overtime
27 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
28 based on the minimum wage established for the cities and/or counties within which Aggrieved

1 Employees worked, resulting in the miscalculation and underpayment of overtime wages owed to
2 Aggrieved Employees who worked in cities and/or counties in California with minimum wage rates
3 above the California minimum wage rate.

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

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

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

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

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

27 181. For example, based on information and belief, Aggrieved Employees earned shift
28 differential pay, non-discretionary bonuses/incentive pay and/or other non-discretionary

1 compensation during pay periods in which they worked overtime, yet DEFENDANTS failed to
2 incorporate all non-discretionary compensation into the regular rate(s) used to calculate the owed
3 overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to
4 Aggrieved Employees.

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

9 **Statutory Wage Violations**

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

21 **Refusal to Make Payment**

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

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

2 **Standard Conditions of Labor Violations**

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

11 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

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

25 **Wage Statement Violations**

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

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

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

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

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

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

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

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

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

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

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

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

23 205. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
24 Aggrieved Employees with accurate, itemized wage statements.

25 206. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
26 Employees have suffered injury. The absence of accurate information on their wage statements has
27 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
28 mathematical computations to determine the amount of wages owed, and will cause difficulty and

1 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
2 submission of inaccurate information about wages and amounts deducted from wages to state and
3 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
4 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
5 and pay records than if DEFENDANT had complied with its legal obligations.

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

9 **Unlawful Deductions**

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

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

22 **Reporting Time Pay Violations**

23 210. Section 5 of all applicable IWC Wage Orders, provides as follows:

24 211. (A) Each workday an employee is required to report for work and does report, but is
25 not put to work or is furnished less than half said employee's usual or scheduled day's work, the
26 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
27 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less

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

1 than the minimum wage. (B) If an employee is required to report for work a second time in any one
2 workday and is furnished less than two (2) hours of work on the second reporting said employee
3 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
4 minimum wage.

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

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

15 **Seating Violations**

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

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

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

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

26 216. Suitable seating is one of the worker protections covered by California's Wage
27 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
28 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*

1 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

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

10 219. The Aggrieved Employees worked in various positions. The nature of Aggrieved
11 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
12 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
13 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
14 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
15 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
16 separate civil penalty.

17 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

28 229. Based on information and belief, DEFENDANTS had and continue to have a

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

5 **Untimely Payment of Final Wages**

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

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

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

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

1 **Violation of Labor Code Section 208**

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

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

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

12 236. Based on information and belief, DEFENDANTS had/have a policy and practice of
13 failing to provide Aggrieved Employees, upon hire, with a written description of each quota they
14 are subject to (e.g., quantified number of tasks to be performed or materials to be handled) within a
15 defined period of time and any potential adverse employment action that may result from failure to
16 meet the quota. Based on further information and belief, DEFENDANTS had/have a policy and
17 practice of subjecting Aggrieved Employees to quotas that prevented those Aggrieved Employees
18 from taking their meal and rest periods and/or using bathroom facilities and/or interfered with
19 compliance of California's occupational health and safety laws.

20 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

21 *Unlawful Agreements.*

22 237. Labor Code section 432.5 provides that "no employer...shall require any employee
23 or applicant for employment to agree, in writing, to any term or condition which is known by such
24 employer...to be prohibited by law." Based on information and belief, DEFENDANTS required
25 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not
26 limited to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or
27 nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful
28 meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements

1 and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
2 employment in violation of Labor Code section 432.5.

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

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

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

19 241. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
20 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
21 432.5.

22 Unlawful Inquires into Criminal History

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

27 243. Upon information and belief, DEFENDANTS, in violation of California law,
28 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act

1 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
2 employment and/or otherwise impermissibly inquired into criminal history on its employment
3 application in violation of California law.

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

9 Unlawful PAGA Waiver

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

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

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

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

1 **Violation of Labor Code Section 432.6**

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

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

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

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

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

19 254. Under the provisions of PAGA and the above mentioned Labor Code sections,
20 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
21 226.7, 227.3, 245-248.6, 256, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194,
22 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2100-2112, 2802, 2810.5 and all applicable Wage
23 Orders as well as all interpretations of these laws by California Courts and administrative bodies, as
24 well as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
25 penalties:

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

1 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
2 violations without a civil penalty recoverable under the PAGA, all in the default
3 amounts provided by Labor Code section 2699(f).

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

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

9 **PRAYER FOR RELIEF**

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

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

19 Dated: August 1, 2024

CROSNER LEGAL, PC

20
21 By: _____

Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff
LEIGHA SCHARSCH