

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

8 Attorneys for Plaintiff RAOUL MIRANDA
on behalf of the State of California and all Aggrieved Employees

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

12 RAOUL MIRANDA, on behalf of the State
of California and all Aggrieved Employees,

13 Plaintiff,

14 v.

15
16 REXEL USA, INC., a Delaware
Corporation; and DOES 1-100, inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
8/16/2024 12:48:45 PM

Clerk of the Superior Court
By C. Miranda ,Deputy Clerk

Case No.: 24CU006363C

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

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

5 **INTRODUCTION**

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

11 **JURISDICTION AND VENUE**

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

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

21 **THE PARTIES**

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

24 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF was employed
25 by DEFENDANTS as a non-exempt employee from in or around 2011 through in or around
26 November 2023. At times during PLAINTIFF’s employment, PLAINTIFF worked for
27 DEFENDANTS as a warehouse associate and/or similar title(s) and/or job position(s). At times
28 during PLAINTIFF’s employment, PLAINTIFF worked for DEFENDANTS as a counter

1 salesperson and/or similar title(s) and/or job position(s). PLAINTIFF worked for DEFENDANTS
2 at DEFENDANTS' San Diego, California location(s).

3 6. Defendant REXEL USA, INC. is a Delaware Corporation that, at all relevant times,
4 was authorized to do business within the State of California and is doing business in the State of
5 California.

6 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
7 warehouse distribution centers, manufacturing and/or processing centers and/or facilities and/or
8 other location(s) in California, including but not limited to the warehouse distribution centers,
9 manufacturing and/or processing centers and/or facilities in various cities in California, including
10 but not limited to, San Diego, Fullerton and Santa Clara, California. DEFENDANTS, through its
11 various locations, serve, including but not limited to, the electrical supply and/or distribution
12 industry.¹

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

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

28 ¹ See <https://www.rexelusa.com/locations?lat=45.4781&lng=-122.786&zoom=10>. Last visited on August 15, 2024.

1 controlled, aided and abetted the conduct of all other Defendants.

2 **JOINT LIABILITY**

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

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

27 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
28 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized

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

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

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

1 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
2 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
3 collectively would evaluate their wage rates.

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

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

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

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

21 **PAGA ALLEGATIONS**

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

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

1 Period”).

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

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

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

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

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

27 24. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
28 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46

1 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

2 **FACTUAL ALLEGATIONS**

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

7 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
8 DEFENDANTS as a non-exempt employee with a job title(s) of warehouse associate and/or counter
9 salesperson and/or a similar title(s) and/or job position(s) from in or around 2011 through in or
10 around November 2023.

11 27. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' San Diego, California
12 location(s). PLAINTIFF regularly worked at least eight (8) to nine (9) hours per day, at least five
13 (5) days per week.

14 28. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
15 hourly basis for time counted by DEFENDANTS as hours worked. Based on information and belief,
16 DEFENDANTS also compensated PLAINTIFF and other Aggrieved Employees with non-
17 discretionary compensation.

18 29. For example, DEFENDANTS compensated PLAINTIFF with non-discretionary
19 bonus pay/incentive pay (e.g., non-discretionary production-based bonuses/incentive pay and/or
20 bonuses/incentive pay for meeting sales quotas) and/or other non-discretionary compensation.

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

28 31. Based on information and belief, DEFENDANTS implemented a policy and/or
8
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

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

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

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

21 35. Based on information and belief, Aggrieved Employees were required to complete
22 other off-the-clock work tasks after clocking out for the end of their shifts and/or during
23 uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum
24 and overtime wages owed to Aggrieved Employees. For example, based on information and belief,
25 DEFENDANTS required Aggrieved Employees to clock out for the end of their shifts but to
26 continue working due to the need to return/maintain tools, clean and/or organize their work
27 stations/areas, provide shift status updates and/or debriefings and/or participate in work meetings,
28 respond to work-related communications and/or perform other work tasks off-the-clock, resulting

1 in the underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

2 36. Based on information and belief, DEFENDANTS did not compensate Aggrieved
3 Employees for all time spent donning and doffing personal protective equipment, safety equipment
4 and/or uniforms/work clothing during meal periods, before the start of a scheduled shift, and after
5 completing a scheduled shift, resulting in DEFENDANTS' failure to pay Aggrieved Employees for
6 all work time and the underpayment of minimum wages and overtime wages owed to Aggrieved
7 Employees.

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

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

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

23 40. Based on information and belief, Aggrieved Employees were also pressured to
24 complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals
25 and expectations. For example, based on information and belief, Aggrieved Employees were
26 required to complete off-the-clock work outside of scheduled shifts due to including but not limited
27 to, work-related phone calls and/or messages they received to their phones and/or mobile devices
28 and were required to respond to, including but not limited to, communications from supervisors

1 regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to
2 Aggrieved Employees.

3 41. Based on information and belief, DEFENDANTS failed to pay Aggrieved
4 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
5 Employee worked in California.

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

11 43. Based in information and belief, DEFENDANTS implemented a time-rounding
12 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
13 compensable time because the time-rounding system implemented by DEFENDANTS would
14 almost always, if not always, result in understating actual compensable work time.

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

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

26 46. Based on information and belief, DEFENDANTS had actual and/or constructive
27 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
28 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the

1 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation
2 of California's minimum and overtime wage laws.

3 47. Based on information and belief, DEFENDANTS calculated the owed overtime
4 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
5 based on the minimum wage established for the cities and/or counties within which Aggrieved
6 Employees worked, resulting in the miscalculation and underpayment of overtime wages owed to
7 Aggrieved Employees who worked in cities and/or counties in California with minimum wage rates
8 above the California minimum wage rate.

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

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

18 50. For example, DEFENDANTS compensated Aggrieved Employees with non-
19 discretionary bonus pay/incentive pay (e.g., non-discretionary production-based bonuses/incentive
20 pay and/or bonuses/incentive pay for meeting sales quotas) and/or other non-discretionary
21 compensation, however, DEFENDANTS failed to incorporate all non-discretionary compensation
22 into the regular rate(s) of pay used to calculate the owed overtime rate(s), resulting in the
23 miscalculation and underpayment of overtime wages owed to Aggrieved Employees.

24 51. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
25 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
26 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
27 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
28 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often

1 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
2 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
3 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
4 completely.

5 52. For example, PLAINTIFF was often forced to take his meal period late (i.e. after
6 working more than five (5) hours) due to the need to complete assigned job duties. For example,
7 DEFENDANTS own time records for including but not limited to the following dates, show
8 PLAINTIFF was required to clock out for a meal period after working more than five (5) hours:
9 2.20.23; 2.23.23; 3.7.23; 3.21.23; and 3.28.23. However, DEFENDANTS' wage statements issued
10 to PLAINTIFF inclusive of those pay dates do not reflect the payment of a single meal period
11 premium for these late and/or otherwise legally non-compliant meal periods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 67. For example, Aggrieved Employees were frequently if not always unable to take
14 compliant rest periods due to their need to complete assigned job duties and/or were unable to take
15 a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to
16 DEFENDANTS' premises.

17 68. For example, PLAINTIFF was frequently, if not always, required to work through
18 part or all of his owed rest periods each shift due to the need to complete assigned job duties.

19 69. Also, DEFENDANTS threatened PLAINTIFF with disciplinary action and/or
20 reprimanded PLAINTIFF on occasions on which PLAINTIFF tried to take his owed ten-minute rest
21 periods. As such, PLAINTIFF rarely, if ever, received a compliant rest period during PLAINTIFF's
22 employment.

23 70. Based on information and belief, DEFENDANTS failed to authorize and permit rest
24 periods that were a "net" ten minutes in a suitable rest area, and instead, to the extent rest periods
25 were provided, DEFENDANTS limited PLAINTIFF and other Aggrieved Employees to only ten-
26 minute rest periods, requiring them to be back at their workstations within ten minutes of leaving
27 their work stations , in violation of California rest period law.

28 71. Based on information and belief, any purported rest periods were interrupted, cut

1 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of
2 their job duties, and/or commentary from supervisors pressuring them to skip rest periods
3 completely and/or take non-compliant rest periods.

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

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

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

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

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

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

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

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

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

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

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

25 82. Based on information and belief, wage statements issued by DEFENDANTS failed
26 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid, in
27 violation of including but not limited to, Labor Code section 226(a)(2) and/or Labor Code section
28 226(a)(6). 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 83. Separately, and independent of the above allegations, based on information and
7 belief, DEFENDANTS issued wage statements to Aggrieved Employees that failed to list the total
8 hours worked, in violation of including but not limited to, Labor Code section 226 (a)(2).

9 84. Based on information and belief, DEFENDANTS issued wage statements to
10 Aggrieved Employees that fail to accurately list all deductions, in violation of Labor Code section
11 226(a)(4).

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

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

20 87. For example, based on information and belief, DEFENDANTS failed to incorporate
21 all non-discretionary compensation into the regular rate(s) of pay for purposes of calculating the
22 owed overtime rate(s), resulting in the miscalculation of the owed overtime rate(s) and
23 DEFENDANTS' failure to list all applicable hourly rates in effect during the pay period and the
24 corresponding number of hours worked at each hourly rate by the Aggrieved Employee on wage
25 statements issued by DEFENDANTS to Aggrieved Employees, in violation of including but not
26 limited to, Labor Code Section 226(a)(9).

27 88. As such, DEFENDANTS' issued wage statements to Aggrieved Employees that did
28 not include all of the statutorily required information, including but not limited to, the correct name

1 and/or address of the legal entity that is the employer.

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

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

8 91. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
9 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
10 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
11 from Aggrieved Employees paychecks during the relevant period including without limitation,
12 deducting business costs and/or deducting wages for purported overpayments from previous pay
13 periods and/or unlawfully ducting wages for negligently damaged property and/or unlawfully
14 deducting transaction fees/pay/money card fees and/or deducting costs advanced by
15 DEFENDANTS. Such a practice is in violation of including but not limited to, Labor Code Sections
16 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

25 93. DEFENDANTS have failed and continue to fail to keep accurate and complete
26 records showing total hours worked by virtue of DEFNDANTS’ time rounding, automatic meal
27 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
28 employer control during unpaid meal periods, failure to record the true start and end times of meal

1 periods, shift start times and shift end times, and other off-the-clock work policies and practices
2 described herein.

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

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

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

27 **97.** For example, DEFENDANTS required PLAINTIFF to use his personal cell
28 phone/mobile device for work, including but not limited to, to send and/or receive work-related calls

1 and/or messages. For example, while at times DEFENDANTS purported to provide PLAINTIFF
2 with a company phone, DEFENDANTS still required PLAINTIFF to use his personal cell
3 phone/mobile device to discuss work-related matters.

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

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

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

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

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

25 103. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
26 for all reasonable expenses associated with carrying out their duties required that Aggrieved
27 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
28 2802.

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

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

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

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

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

5 109. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
6 provides as follows:

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

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

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

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

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

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

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

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

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

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

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

27 119. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
28 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that

1 were due and owing upon termination or resignation. Based on information and belief,
2 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
3 requirements of Labor Code sections 201-202.

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

10 121. For example, upon separation of employment, DEFENDANTS failed to furnish
11 PLAINTIFF with any final paycheck for at least approximately two (2) days following
12 PLAINTIFF's date of termination, and PLAINTIFF's late final paycheck was devoid of all wages
13 owed, including but not limited to, all owed minimum wages, overtime wages, premium wages,
14 vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including
15 but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
16 discretionary compensation, including but not limited to, shift differentials). For example,
17 DEFENDANTS' personnel records for PLAINTIFF reflect DEFENDANTS terminated
18 PLAINTIFF's employment effective November 15, 2023, however, PLAINTIFF's final paycheck
19 is dated November 17, 2023 and the final paycheck is devoid of all wages owed, including but not
20 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick
21 leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed
22 vacation pay/paid time off paid at the final rate including non-discretionary compensation, including
23 but not limited to, any shift differential pay).

24 122. Based on further information and belief, DEFENDANTS failed to timely provide all
25 owed wages immediately upon discharge of employment. Based on information and belief, at times,
26 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
27 Aggrieved Employees would not be called in for work for longer than a single pay period due to
28 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances

1 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
2 the end of such periods of employment, in violation of including but not limited to Labor Code
3 section 201-202.

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

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

13 **125. Failure to Provide Written Commission Agreements:** Labor Code section 2751
14 requires that all commission contracts "be in writing and . . . set forth the method by which the
15 commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute,
16 employers must also "give a signed copy of the contract to every employee who is a party [to the
17 contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section 2751(b).

18 **126.** Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
19 Aggrieved Employees who were compensated on a commission basis with proper written
20 commission agreements, in violation of Labor Code section 2751.

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

22 Unlawful Agreements.

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

1 meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements
2 and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
3 employment in violation of Labor Code section 432.5.

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

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

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

20 132. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
21 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
22 432.5.

23 Unlawful Inquires into Criminal History

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

28 134. Upon information and belief, DEFENDANTS, in violation of California law,

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

5 Unlawful PAGA Waiver

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

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

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

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

25 139. **Violation of Labor Code Section 432.6.** Based on information and belief,
26 DEFENDANTS require/required Aggrieved Employees to waive their right to first and/or second
27 meal periods as a condition of working for DEFENDANTS in violation of California law. As such,
28 DEFENDANTS violated including but not limited to, Labor Code section 432.6 by virtue of

1 including but not limited to, requiring Aggrieved Employees to sign invalid meal period waivers as
2 a condition of employment and/or for threatening, retaliating and/or discriminating against and/or
3 terminating Aggrieved Employees because of their refusal to waive their meal period rights.

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

8 **FIRST CAUSE OF ACTION**
9 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
10 **2698, *ET SEQ.***

11 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
12 **Defendants)**

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

14 **Failure to Keep Accurate Records**

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

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

24 144. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
25 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
26 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
27 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
28 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay

1 period during which the referenced statutes and Wage Order provisions were violated.²

2
3 **Meal Period Violations**

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

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

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

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

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 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
2 for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

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

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

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

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

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

24 154. These unlawful meal period policies and practices result in violations of Labor Code
25 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
26 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
27 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
28 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

1 **Rest Period Violations**

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

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

26 157. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
27 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
28 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject

1 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
2 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
3 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

20 **Failure to Provide Suitable Resting Facilities**

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

25 163. DEFENDANTS' locations/facilities are generally similar in layout and design, and
26 there was, and continues to be, space that allows for a resting facility that employees may use to
27 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
28 Employees with a resting facility within DEFENDANTS' facilities/locations with reasonable or no

1 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a
2 suitable breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive
3 to resting, including but not limited to leaning up against the wall, or search for facilities outside of
4 DEFENDANTS' premises which are not designated or reserved for their rest, such as their personal
5 vehicles.

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

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

11 **Minimum and Overtime Wage Violations**

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

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

25 168. As explained above, DEFENDANTS violated California's minimum and overtime
26 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
27 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
28 start and end times and meal period start and end times), payment according to scheduled hours

1 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during
2 meal periods, and/or other otherwise off-the-clock work (described above), and/or other unlawful
3 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

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

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

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

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

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

25 174. Based on information and belief, DEFENDANTS further violated California's
26 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
27 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
28 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to

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

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

8 **Statutory Wage Violations**

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

20 **Refusal to Make Payment**

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

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

2 **Standard Conditions of Labor Violations**

3 178. 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**

12 179. 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.”

18 180. 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).

1 181. 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.

5 182. 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.

7 183. 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.

11 184. 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.

14 185. 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.

18 186. 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.

21 187. 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**

26 188. 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.

7 189. 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).

15 190. 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.

25 191. 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

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

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

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

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

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

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

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

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

199. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved Employees have suffered injury. The absence of accurate information on their wage statements has prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and 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.

6 200. 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**

10 201. 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.

16 202. 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**

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

24 204. (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 ~~4~~ 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.

5 205. 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.

10 206. 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**

16 207. 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.

19 208. 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.

26 209. 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).

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

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

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

18 **Sick Leave Violations**

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

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

1 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
2 Aggrieved Employees' intelligent exercise of their paid sick leave.

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

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

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

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

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

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

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

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

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

6 **Untimely Payment of Final Wages**

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

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

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

26 226. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
27 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
28 256.

1 **Violation of Labor Code Section 208**

2 227. 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.

6 228. 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**

12 229. 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 **Failure to Provide Written Commission Agreements**

21 230. Labor Code section 2751 requires that all commission contracts "be in writing and .
22 . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code
23 section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract
24 to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract
25 from each employee." *Id.* section 2751(b).

26 231. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
27 Aggrieved Employees who were compensated on a commission basis with proper written
28 commission agreements, in violation of Labor Code section 2751.

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

2 *Unlawful Agreements.*

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

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

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

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

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

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

3
4 Unlawful Inquires into Criminal History

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

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

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

19 Unlawful PAGA Waiver

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

24 241. 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.”)

2 242. 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.’”)

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

12 **Violation of Labor Code Section 432.6**

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

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

20 246. Labor Code Section 432.6(b) provides in pertinent part:

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

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

1 refusal to waive their meal period rights.

2 249. Under the provisions of PAGA and the above mentioned Labor Code sections,
3 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
4 226.7, 227.3, 245-248.6, 256, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
5 1197.1, 1198, 1199, 2699, 2699.3, 2100-2112, 2751, 2802, 2810.5 and all applicable Wage Orders
6 as well as all interpretations of these laws by California Courts and administrative bodies, as well
7 as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
8 penalties:

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

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

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF

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

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

Dated: August 16, 2024

CROSNER LEGAL, PC

By: 

Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff
RAOUL MIRANDA