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County of Alameda

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on behalf of the State of California and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

NIA HUDSON, on behalf of the State of
California and all Aggrieved Employees,

Plaintiff,

v.

PLAY-WELL TEKNOLOGIES LLC;
TIMOTHY D. BOWEN; and DOES 1-100,
inclusive,

Defendants.

Case No.: **24CV087281**

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

1 Plaintiff, NIA HUDSON, ("PLAINTIFF"), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants PLAY-
3 WELL TEKNOLOGIES LLC; TIMOTHY D. BOWEN; and DOES 1-100, inclusive, (collectively
4 referred to herein as "DEFENDANTS"). PLAINTIFF is informed and believes and thereon alleges
5 as follows:

6 **INTRODUCTION**

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

12 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
26 DEFENDANTS as a non-exempt employee with a job title(s) of instructor and/or a similar title(s)
27 and/or job position(s) from in or around March 2022 through in or around March 2024. PLAINTIFF
28 worked for DEFENDANTS at DEFENDANTS' East Bay Area, California location(s). PLAINTIFF

1 regularly worked at least approximately three and one-half (3 ½) hours to eight (8) hours, at times
2 working more than eight (8) hours in a workday.

3 6. Defendant PLAY-WELL TEKNOLOGIES LLC is a business entity, form unknown,
4 that, at all relevant times, was authorized to do business within the State of California and is doing
5 business in the State of California. Defendant PLAY-WELL TEKNOLOGIES LLC operates its
6 business under including but not limited to, the name(s) “Play-Well Teknologies,” “Play-Well
7 Teknologies LLC,” “Play-Well,” and/or “Play-Well Outreach.”

8 7. Defendant TIMOTHY D. BOWEN is an individual or individual entity that does
9 business as including but not limited to, “Play-Well Teknologies,” “Play-Well Teknologies LLC,”
10 “Play-Well,” and/or “Play-Well Outreach.”

11 8. DEFENDANTS own, operate, manage and/or staff its employees to work at the
12 schools, campuses and/or facilities and/or other location(s) in California, including but not limited
13 to, the schools, campuses and/or facilities in the East Bay Area in, California. DEFENDANTS,
14 through its various, other locations, serve including but not limited to, the education industry.¹

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

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

28 ¹ See <https://www.play-well.org/>. Last visited on August 12, 2024.

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

5 **JOINT LIABILITY**

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

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

1 and Aggrieved Employees to work for them.

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

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

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

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

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

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

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

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

24 **PAGA ALLEGATIONS**

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

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

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

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

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

17 22. PLAINTIFF, on June 7, 2024, through counsel, gave written notice by online filing
18 with the California Labor and Workforce Development Agency (“LWDA”) informing it that
19 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
20 in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via
21 certified mail.

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

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

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

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

5 **FACTUAL ALLEGATIONS**

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

10 27. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
11 DEFENDANTS as a non-exempt employee with a job title(s) of instructor and/or a similar title(s)
12 and/or job position(s) from in or around March 2022 through in or around March 2024. PLAINTIFF
13 worked for DEFENDANTS at DEFENDANTS' East Bay Area, California locations(s).
14 PLAINTIFF regularly worked at least approximately three and one-half (3 ½) hours to eight (8)
15 hours, at times working more than eight (8) hours in a workday.

16 28. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
17 DEFENDANTS as hours worked. PLAINTIFF also earned tips as part of his compensation.

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

25 30. Based on information and belief, DEFENDANTS implemented a policy and/or
26 practice of rounding meal period start and end times and/or automatically deducting at least thirty
27 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
28 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during

1 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
2 PLAINTIFF and Aggrieved Employees of all wages owed.

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

7 32. For example, based on information and belief, Aggrieved Employees were required
8 to be at their respective workstations at their scheduled shift start time or face discipline. As such,
9 Aggrieved Employees typically arrived at work prior to their scheduled shift start times so that they
10 could perform any required pre-shift work, including but not limited to, bestow personal items in
11 employee lockers/storage area, retrieve and/or compile work tools/equipment, make any necessary
12 adjustments to tools/equipment don work clothing/uniforms and/or protective equipment, and/or
13 complete other work tasks so as to be ready to be at their respective work stations at the their
14 scheduled shift start time as mandated by DEFENDANTS. This pre-shift off-the-clock work was
15 neither recorded nor compensated resulting in the substantial underpayment of wages owed to
16 Aggrieved Employees.

17 33. Based on information and belief, DEFENDANTS' electronic employee time-
18 keeping system/app at times malfunctioned such that Aggrieved Employees were required to either
19 reinitiate the system/app prior to being able to clock in and/or were unable to clock in at all for the
20 start of their shifts and/or clock back in from meal periods, resulting in consistent off-the-clock work
21 and the underpayment of minimum and overtime wages owed to Aggrieved Employees. Based on
22 information and belief, Aggrieved Employees experienced the same issues when clocking out for
23 shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not
24 recorded and not compensated and resulted in unpaid minimum wages.

25 34. Based on information and belief, Aggrieved Employees were at times required to
26 wait in line behind other Aggrieved Employees to enter DEFENDANTS' facilities and/or access
27 DEFENDANTS' time-keeping system and/or were required to spend time reinitiating
28 DEFENDANTS' time-keeping system so they could then clock in for the start of their shifts which

1 said waiting time spent under DEFENDANTS' control that was neither recorded nor compensated,
2 resulting in DEFENDANTS' failure to compensate PLAINTIFF and other Aggrieved Employees
3 for all time worked and the underpayment of minimum wages and overtime wages owed to
4 PLAINTIFF and other Aggrieved Employees.

5 35. Based on information and belief, Aggrieved Employees were also required to
6 perform post-shift off-the-clock work that was neither recorded nor compensated.

7 36. For example, based on information and belief, Aggrieved Employees were required
8 to put away their work tools/equipment, provide shift debriefings/make/receive work-related
9 communications and/or complete administrative tasks, assist students, change out of their work
10 clothing/uniforms and/or protective gear after clocking out for the end of their shifts, resulting in
11 DEFENDANTS' failure to compensate Aggrieved Employees for all time worked and the
12 underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

13 37. For example, based on information and belief, Aggrieved Employees were at times
14 required to clock out for the end of their shifts but were required to return back to work off-the-
15 clock due to the need to assist students and/or complete other assigned job duties.

16 38. Based on information and belief, DEFENDANTS did not compensate Aggrieved
17 Employees for time spent donning and doffing uniforms and/or personal protective equipment
18 and/or safety equipment (e.g., gloves and/or face masks) during meal periods, before the start of a
19 scheduled shift, and after completing a scheduled shift, resulting in off-the-clock work and the
20 underpayment of wages owed to Aggrieved Employees.

21 39. Based on information and belief, DEFENDANTS required Aggrieved Employees to
22 obtain Covid-related testing outside of their scheduled shift times without compensating them for
23 the time spent completing DEFENDANTS' testing requirements. Based on information and belief,
24 DEFENDANTS performed an automatic deduction for meal periods that were worked through,
25 interrupted, cut short, and/or during which Aggrieved Employees were not relieved of all duties and
26 DEFENDANTS' control, resulting in DEFENDANTS' failure to compensate Aggrieved Employees
27 for all hours worked and the underpayment of minimum wages and overtime wages owed to
28 Aggrieved Employees.

1 40. Based on information and belief, Aggrieved Employees were also pressured to
2 complete at least some of their work tasks off-the-clock in order to meet DEFENDANTS' goals and
3 expectations.

4 41. For example, based on information and belief, Aggrieved Employees were required
5 to complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-
6 related phone calls and/or messages they received to their phones and were required to respond to,
7 including but not limited to, communications from supervisors regarding scheduling and/or other
8 work tasks, resulting in the underpayment of wages owed to Aggrieved Employees.

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

13 43. Based on information and belief, at times, Aggrieved Employees were required after
14 working at their scheduled facility location to cover a shift and/or work a second shift at another of
15 DEFENDANTS' facilities/locations and/or were otherwise required to spend time driving and/or
16 traveling as a direct consequence of the performance of their job duties but were not compensated
17 for the time spent driving and/or traveling to the second facility and/or second location resulting in
18 off-the-clock work and the underpayment of wages owed to Aggrieved Employees.

19 44. Based on information and belief, at times, Aggrieved Employees also were required
20 to perform off-the-clock work duties including but not limited to, at home/remotely, such as but not
21 limited to, completing trainings/continued education courses and/or reviewing policies and/or other
22 documents as mandated by DEFENDANTS.

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

25 46. For example, based on information and belief, at times, DEFENDANTS required
26 Aggrieved Employees to work two separate shifts in the same day. Based on information and belief,
27 DEFENDANTS failed to pay Aggrieved Employees split shift compensation whenever
28 PLAINTIFF's and/or other Aggrieved Employees' work schedules were interrupted by non-paid

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

14 47. Based on information and belief, DEFENDANTS failed to pay Aggrieved
15 Employees split shift compensation whenever their work schedules were interrupted by non-paid
16 non-working periods established by DEFENDANTS, which resulted in a violation of the applicable
17 Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift,
18 one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that
19 workday...). Based on information and belief, DEFENDANTS failed to pay Aggrieved Employees
20 for time they were required to spend completing orientation, policy questionnaires, and/or time spent
21 completing the onboarding process including but not limited to reviewing various documents and
22 policies provided by DEFENDANTS. Based on information and belief, this work time was
23 completed off-the-clock and was not compensated.

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

28 49. For example, as explained herein, DEFENDANTS issued wage statements to

1 PLAINTIFF that demonstrate DEFENDANTS rounded Aggrieved Employees' total hours worked
2 to at least the nearest tenth, quarter, half and/or whole hour during various, if not all pay periods,
3 resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the
4 underpayment of wages owed to PLAINTIFF.

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

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

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

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

26 54. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF and
27 other Aggrieved Employees all owed overtime wages due to DEFENDANTS' policy and practice
28 of scheduling PLAINTIFF and other Aggrieved Employees for split shifts and thus only paying

1 premium wages, if at all, for time worked beyond eight (8) hours in a shift while failing to pay all
2 premium wages for all time worked beyond eight (8) hours in a workday, resulting in denied
3 overtime wages owed to PLAINTIFF and other Aggrieved Employees.

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

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

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

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

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

28 60. Based on information and belief, DEFENDANTS implemented policies and/or

1 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
2 during unpaid meal periods.

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

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

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

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

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

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

27 67. Based on information and belief, DEFENDANTS had actual and/or constructive
28 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods

1 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
2 violation of California's meal period laws.

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

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

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

18 71. Based on information and belief, DEFENDANTS did not have a have a compliant
19 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
20 practice.

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

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

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

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

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

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

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

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

24 80. DEFENDANTS' locations/facilities are generally similar in layout and design, and
25 there was, and continues to be, space that allows for a resting facility that employees may use to
26 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
27 Employees with a resting facility within DEFENDANTS' facilities/locations with reasonable or no
28 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a

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

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

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

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

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

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

1 226(a)(6). For example, based on information and belief, at times, DEFENDANTS issued wage
2 statements to Aggrieved Employees containing payment for hours worked during previous pay
3 periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate
4 pay period for that retroactive pay, further failing to list the total hours worked for the pay period,
5 including but not limited to, the total hours worked for the pay period the retroactive pay corresponds
6 with.

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

10 87. Based on information and belief, DEFENDANTS issued wage statements to
11 Aggrieved Employees that fail to accurately list all deductions, in violation of Labor Code section
12 226(a)(4).

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

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

21 90. DEFENDANTS provided inaccurate wage statements that list a "Cumulative Rate"
22 in dollars but fail to list the corresponding hours/units and fail to include the "Cumulative Rate" in
23 the total gross and net wages earned for the pay period(s), in violation of including but not limited
24 to, Labor Code sections 226(a)(1), 226(a)(5) and/or 226(a)(9).

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

28 92. Based on further information and belief, DEFENDANTS issued wage statements to

1 Aggrieved Employees that failed to list the accurate total hours worked whenever shift differential
2 wages were paid in violation of Labor Code section 226.

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

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

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

23 96. DEFENDANTS have failed and continue to fail to keep accurate and complete
24 records showing total hours worked by virtue of DEFNDANTS’ time rounding, automatic meal
25 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
26 employer control during unpaid meal periods, failure to record the true start and end times of meal
27 periods, shift start times and shift end times, and other off-the-clock work policies and practices
28 described herein.

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

7 98. Based on information and belief, DEFENDANTS shifted the costs of doing business
8 onto Aggrieved Employees by requiring them to pay for business expenses including but not limited
9 to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of NON-
10 EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES' personal
11 cell phones/mobile devices, internet and/or data usage for work-related purposes, including but not
12 limited to, to receive and respond to work-related messages and/or phone calls. For example, based
13 on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT
14 AGGRIEVED EMPLOYEES were required to receive and respond to work-related calls and/or
15 messages from supervisors and/or other employees regarding scheduling and/or other work tasks
16 but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

17 99. For example, DEFENDANTS required PLAINTIFF to use her personal cell
18 phone/mobile device to carry out her assigned job duties, including but not limited to, downloading
19 and regularly using work-related applications. For example, DEFENDANTS required PLAINTIFF
20 to download and regularly use an employee-timekeeping application to use to clock in and clock out
21 for her shifts and meal periods and/or other work-related applications, however, DEFENDANTS
22 failed to provide PLAINTIFF with any and/or full reimbursement for the business expenses
23 PLAINTIFF incurred in connection therewith, including but not limited to, increased data plan
24 charges.

25 100. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES
26 and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of purchasing
27 and/or maintaining their own hand tools and/or equipment required to perform their assigned job
28 duties and/or for the costs of purchasing and/or maintaining work uniforms/clothing/shoes and/or

1 protective gear (e.g., gloves and/or face masks).

2 101. Based on information and belief, at times, NON-EXEMPT AGGRIEVED
3 EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business
4 use of their personal vehicles, including mileage, wear and tear and/or cost of fuel when they were
5 required to drive around and/or between job sites, and/or otherwise use their personal vehicles in
6 carrying out the duties assigned by DEFENDANTS. As such, DEFENDANTS failed to compensate
7 NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at
8 the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during
9 the relevant period.

10 102. For example, DEFENDANTS required PLAINTIFF to use her personal vehicle to
11 carry out her assigned job duties, including but not limited to, for driving between the various
12 schools PLAINTIFF was assigned to work at by DEFENDANTS. However, DEFENDANTS failed
13 to provide PLAINTIFF with any and/or full reimbursement for all vehicle-related expenses incurred
14 in connection with being required by DEFENDANTS to use her personal vehicle to carry out
15 PLAINTIFF's assigned job duties.

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

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

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

27 106. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
28 for all reasonable expenses associated with carrying out their duties required that Aggrieved

1 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
2 2802.

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

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

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

26 110. Upon information and belief, DEFENDANTS failed and continue to fail to comply
27 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
28 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick

1 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
2 wages.

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

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

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

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

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

27 116. **Seating Violations.** Per section 14(A-B) of all applicable IWC Wage Orders,
28 employees shall be provided with suitable seats when the nature of the work reasonably permits the

1 use of seats and when they are not actively engaged in the work duties that would not permit them
2 to be seated.

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

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

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

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

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

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

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

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

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

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

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

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

1 Labor Code Section 208.

2
3 **127. Unlawful Agreements-Unlawful Criminal History Inquiries.**

4 Unlawful Agreements.

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

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

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

27 131. Based on further information and belief, DEFENDANTS knew that requiring
28 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a

1 condition of obtaining and/or holding employment was unlawful.

2 132. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
3 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
4 432.5.

5 Unlawful Inquires into Criminal History

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

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

15 Unlawful PAGA Waiver

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

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

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

1 action on behalf of the state.”)

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

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

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

18 **FIRST CAUSE OF ACTION**
19 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
20 **2698, *ET SEQ.***

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

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

24 **Failure to Keep Accurate Records**

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

29 143. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
and complete records as required by law, including but not limited to the following records: total

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

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

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

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

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

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 the employer. Lab. Code section 226(f).

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

11 148. Based on information and belief, DEFENDANTS fail to timely produce or make
12 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant
13 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order.

14 149. For example, PLAINTIFF, through counsel, sent a written request for personnel and
15 payroll records on or around the following date(s): May 31, 2024, and July 30, 2024. However,
16 DEFENDANTS failed to timely produce complete personnel and payroll records within the time
17 periods delineated by California law. Based on information and belief, DEFENDANTS fail to timely
18 produce or make available other Aggrieved Employees' personnel records and/or payroll records
19 when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage
20 Order.

21 150. These violations subject DEFENDANTS to penalties under Labor Code sections
22 226, 1198.5, and 2699.

23 **Meal Period Violations**

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

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

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

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

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

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

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

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

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

12 160. These unlawful meal period policies and practices result in violations of Labor Code
13 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
14 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
15 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
16 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

17 **Rest Period Violations**

18 161. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
19 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
20 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
21 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
22 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
23 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
24 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
25 1029). The rest period requirement obligates employers to permit and authorize employees to take
26 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
27 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
28 257. If the employer fails to provide any required rest period, the employer must pay the employee

1 one hour of pay at the employee's regular rate of compensation for each workday the employer did
2 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
3 applicable IWC Wage Order, §12(B).

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

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

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

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

27 166. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
28 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there

1 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
2 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
3 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
4 the regular rate of compensation for purposes of determining the owed rest period premium.

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

8 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

27 **Minimum and Overtime Wage Violations**

28 172. California law provides that employees in California must be paid for all hours

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

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

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

20 175. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
21 Aggrieved Employees for all hours worked.

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

28 177. Based on information and belief, DEFENDANTS calculated the owed overtime

1 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
2 based on the minimum wage established for the cities and/or counties within which Aggrieved
3 Employees worked, resulting in the miscalculation and underpayment of overtime wages owed to
4 Aggrieved Employees who worked in cities and/or counties in California with minimum wage rates
5 above the California minimum wage rate.

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

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

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

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

24 **Statutory Wage Violations**

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

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

8 **Refusal to Make Payment**

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

17 **Standard Conditions of Labor Violations**

18 184. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
19 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
20 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
21 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
22 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
23 minimum/overtime wages and other violations described herein result in separate violations of
24 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
25 1197.1 and 2699.

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

1 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

12 **Wage Statement Violations**

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

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

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

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

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

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

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

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

1 201. DEFENDANTS provided inaccurate wage statements that list a “Cumulative Rate”
2 in dollars but fail to list the corresponding hours/units and fail to include the “Cumulative Rate” in
3 the total gross and net wages earned for the pay period(s), in violation of including but not limited
4 to, Labor Code sections 226(a)(1), 226(a)(5) and/or 226(a)(9).

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

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

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

14 205. DEFENDANTS’ knowingly and intentionally failed to provide PLAINTIFF and
15 Aggrieved Employees with accurate, itemized wage statements.

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

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

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

1 **Unlawful Deductions**

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

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

14 **Reporting Time Pay Violations**

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

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

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

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

6 **Seating Violations**

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

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

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

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

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

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

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

1 219. The Aggrieved Employees worked in various positions, including but not limited to,
2 as cashiers and/or similar title(s) and/or position(s). The nature of Aggrieved Employees' work
3 reasonably permitted the use of seats. However, DEFENDANTS failed to provide suitable seating
4 in reasonable proximity to Aggrieved Employees' work areas in violation of section 14(A-B) of all
5 applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to
6 civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section
7 and IWC Wage Order provision, for each Aggrieved Employee, results in a separate civil penalty.

8 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

26 **Untimely Payment of Final Wages**

27 230. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
28 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and

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

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

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

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

21 **Violation of Labor Code Section 208**

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

26 235. Based on information and belief, DEFENDANTS have a policy and practice of
27 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
28 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the

1 office or agency of DEFENDANTS in the county where the work was performed, in violation of
2 Labor Code Section 208.

3 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

4 *Unlawful Agreements.*

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

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

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

27 239. Based on further information and belief, DEFENDANTS knew that requiring
28 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a

1 condition of obtaining and/or holding employment was unlawful.

2 240. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
3 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
4 432.5.

5 Unlawful Inquires into Criminal History

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

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

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

20 Unlawful PAGA Waiver

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

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

1 (“We conclude that where, as here, an employment agreement compels the waiver of representative
2 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

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

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

13 **Violation of Labor Code Section 432.6**

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

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

21 250. Labor Code Section 432.6(b) provides in pertinent part:

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

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

retaliating and/or discriminating against and/or terminating Aggrieved Employees because of their refusal to waive their meal period rights.

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

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

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

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);

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- 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 15, 2024

CROSNER LEGAL, PC

By: 

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