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8 Attorneys for Plaintiff FORRIST CANNADY
on behalf of the State of California and all Aggrieved Employees

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

11 FORRIST CANNADY, on behalf of the State
12 of California and all Aggrieved Employees,

13 Plaintiff,

14 v.

15 MARCH AND ASH, INC., a California
16 Corporation; HONEY OIL COLLECTIVE,
a California Nonprofit Corporation;
17 MARCH AND ASH SABRE SPRINGS,
INC., a California Corporation; MARCH
18 AND ASH RIVERSIDE, INC., a California
Corporation; MARCH AND ASH
19 OXNARD, INC., a California Corporation;
MARCH AND ASH NIRVANA HOLDING
20 LLC, a California Limited Liability
Company; MARCH AND ASH NIRVANA,
21 INC., a California Corporation; MARCH
AND ASH MANAGEMENT COMPANY,
22 LLC, a California Limited Liability
Company; MARCH AND ASH IMPERIAL
23 BEACH, INC., a California Corporation;
MARCH AND ASH CHULA VISTA
24 HOLDINGS LLC, a California Limited
Liability Company; and DOES 1-100,
25 inclusive,

26 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By I. Irizarry ,Deputy Clerk

Case No.: 24CU006315C

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

1 Plaintiff, FORRIST CANNADY, (“PLAINTIFF”), on behalf of the State of California and
2 all Aggrieved Employees (as defined below), hereby files this Complaint against Defendants
3 MARCH AND ASH, INC., a California Corporation; HONEY OIL COLLECTIVE, a California
4 Nonprofit Corporation; MARCH AND ASH SABRE SPRINGS, INC., a California Corporation;
5 MARCH AND ASH RIVERSIDE, INC., a California Corporation; MARCH AND ASH OXNARD,
6 INC., a California Corporation; MARCH AND ASH NIRVANA HOLDING LLC, a California
7 Limited Liability Company; MARCH AND ASH NIRVANA, INC., a California Corporation;
8 MARCH AND ASH MANAGEMENT COMPANY, LLC, a California Limited Liability Company;
9 MARCH AND ASH IMPERIAL BEACH, INC., a California Corporation; MARCH AND ASH
10 CHULA VISTA HOLDINGS LLC, a California Limited Liability Company; and DOES 1-100,
11 inclusive (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
12 believes and thereon alleges as follows:

13 **INTRODUCTION**

14 1. This is a representative action filed by PLAINTIFF on behalf of PLAINTIFF, all
15 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California’s
16 Private Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties
17 (75% payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
18 Employees) for DEFENDANTS’ violations of the California Labor Code as alleged below.

19 **JURISDICTION AND VENUE**

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

22 3. Venue is proper in this judicial district and the County of San Diego pursuant to
23 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within
24 this judicial district, DEFENDANTS maintain their principal business office within this judicial
25 district, DEFENDANTS employed PLAINTIFF to work in this judicial district, and conduct alleged
26 by PLAINTIFF herein occurred in this judicial district. *See also Crestwood Behavioral Health, Inc.*
27 *v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county
28 where the defendants committed Labor Code violations against some of its employees). Venue is

1 also proper pursuant to section 393 of the California Code of Civil Procedure because the cause, or
2 some part of the cause, arose in the County of San Diego.

3 **THE PARTIES**

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

6 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
7 DEFENDANTS as a non-exempt employee with a job title(s) of delivery driver and/or a similar
8 title(s) and/or job position(s) from in or around 2021 through in or around the beginning of February
9 2024. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' assigned location(s) in San
10 Diego County, completing deliveries in including but not limited to, the cities of Oceanside, Vista,
11 and Escondido, California.

12 6. Defendant MARCH AND ASH, INC. is a California Corporation that, at all relevant
13 times, was authorized to do business within the State of California and is doing business in the State
14 of California.

15 7. Defendant HONEY OIL COLLECTIVE is a California Nonprofit Corporation that,
16 at all relevant times, was authorized to do business within the State of California and is doing
17 business in the State of California.

18 8. Defendant MARCH AND ASH SABRE SPRINGS, INC. is a California Corporation
19 that, at all relevant times, was authorized to do business within the State of California and is doing
20 business in the State of California.

21 9. Defendant MARCH AND ASH RIVERSIDE, INC. is a California Corporation that,
22 at all relevant times, was authorized to do business within the State of California and is doing
23 business in the State of California.

24 10. Defendant MARCH AND ASH OXNARD, INC. is a California Corporation that, at
25 all relevant times, was authorized to do business within the State of California and is doing business
26 in the State of California.

27 11. Defendant MARCH AND ASH NIRVANA HOLDING LLC is a California Limited
28 Liability Company, that, at all relevant times, was authorized to do business within the State of

1 California and is doing business in the State of California.

2 12. Defendant MARCH AND ASH NIRVANA, INC. is a California Corporation that,
3 at all relevant times, was authorized to do business within the State of California and is doing
4 business in the State of California.

5 13. Defendant MARCH AND ASH MANAGEMENT COMPANY, LLC is a California
6 Limited Liability Company, that, at all relevant times, was authorized to do business within the State
7 of California and is doing business in the State of California.

8 14. Defendant MARCH AND ASH IMPERIAL BEACH, INC. is a California
9 Corporation that, at all relevant times, was authorized to do business within the State of California
10 and is doing business in the State of California.

11 15. Defendant MARCH AND ASH CHULA VISTA, INC. is a California Corporation
12 that, at all relevant times, was authorized to do business within the State of California and is doing
13 business in the State of California.

14 16. Defendant MARCH AND ASH CHULA VISTA HOLDINGS LLC is a California
15 Limited Liability Company, that, at all relevant times, was authorized to do business within the State
16 of California and is doing business in the State of California.

17 17. DEFENDANTS own, operate, manage and/or staff its employees to work at the
18 dispensaries, stores, facilities and/or other locations in California, including but not limited to, the
19 dispensaries, stores, facilities and/or other locations in cities throughout California, including not
20 limited to, dispensaries, stores, facilities and/or other locations in Palm Desert, Mission Valley,
21 Vista, Imperial Valley, Imperial Beach, Sabre Springs, City Heights, and at least three (3) locations
22 in Chula Vista. DEFENDANTS operate under including but not limited to, the brand name(s)
23 “March and Ash” and/or “Honey Oil Collective.” DEFENDANTS, through its various locations,
24 serve including but not limited to, the consumer products and/or services and/or retail industry.¹

25 18. The true names and capacities of the DOE Defendants sued herein as DOES 1
26 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
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28 ¹ See www.marchandash.com. Last visited on August 12, 2024.

1 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
2 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
3 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
4 become known.

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

15 **JOINT LIABILITY**

16 20. Under California law, the definition of the terms “to employ” are broadly construed
17 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
18 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
19 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
20 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
21 was to reach situations in which multiple entities control different aspects of the employment
22 relationship. Supervision of the work, in the specific sense of exercising control over how services
23 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
24 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
25 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
26 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
27 California, applying a less stringent standard to what constitutes sufficient control by a business
28 over its vendor’s employees’ wages and working conditions to render that business liable as a joint

1 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
2 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
3 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
4 employment,” *Id.* at 875 [emphasis added].

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

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

25 23. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
26 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
27 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
28 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees’

1 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
2 considered the joint employers of PLAINTIFF and Aggrieved Employees.

3 24. For example, DEFENDANTS, and each of them, maintain the same agent for service
4 of process and principal business office/ mailing address as provided to the Secretary of State of
5 California and/or maintain some of the same attorneys and/or human resources personnel to oversee
6 employment-related matters. Also, DEFENDANTS issued wage statements to PLAINTIFF that
7 identify "Honey Oil Collective" as the name of the legal entity that is/was PLAINTIFF's employer,
8 and identify 2835 Camino Del Rio South Suite 220 San Diego, CA 92108 as the address of
9 PLAINTIFF's employer, which said address is the same as the principal business office/ mailing
10 address for DEFENDANTS, and each of them. Also, various documents contained in PLAINTIFF's
11 personnel file, including without limitation, employment safety policies and/or other employment-
12 related policies, employment-related agreements and/or employee acknowledgements identify
13 "March and Ash" as the name of PLAINTIFF's employer.

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

28 26. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
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PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

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

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

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

17 **PAGA ALLEGATIONS**

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

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

26 31. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
27 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
28 limitations period and suffered one or more of the Labor Code violations set forth herein.

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

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

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

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

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

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

26 **FACTUAL ALLEGATIONS**

27 36. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees,
28 worked for DEFENDANTS in the State of California. At all times referenced herein,

1 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
2 permitted them to work.

3 37. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
4 DEFENDANTS as a non-exempt employee with a job title(s) of delivery driver and/or a similar
5 title(s) and/or job position(s) from in or around 2021 through in or around the beginning of February
6 2024.

7 38. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' assigned location(s) in
8 San Diego County, completing deliveries in including but not limited to, the cities of Oceanside,
9 Vista, and Escondido, California.

10 39. PLAINTIFF regularly worked at least six (6) hours per day, at times working at least
11 eight (8) hours per day, at least five (5) days per week.

12 40. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
13 DEFENDANTS as hours worked.

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

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

27 43. Based on information and belief, Aggrieved Employees were not paid for all hours
28 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours

1 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
2 the clock work policies and/or practices.

3 44. For example, as explained above, based on information and belief, DEFENDANTS
4 would unlawfully edit the clock in and out times for PLAINTIFF's and other Aggrieved Employees'
5 meal periods in order to display at least a thirty minute off-duty meal period during most if not all
6 shifts worked, notwithstanding the fact that DEFENDANTS had actual and/or constructive
7 knowledge that DEFENDANTS had required PLAINTIFF and other Aggrieved Employees' to
8 perform work-related tasks during their meal periods.

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

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

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

24 48. For example, based on information and belief, DEFENDANTS required Aggrieved
25 Employees to clock out for the end of their shifts but to continue working due to the need to
26 return/maintain tools, clean and/or organize their work stations/areas, provide shift status updates
27 and/or debriefings and/or participate in work meetings, respond to work-related communications
28 and/or perform other work tasks off-the-clock, resulting in the underpayment of minimum wages

1 and overtime wages owed to Aggrieved Employees.

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

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

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

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

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

26 54. For example, based on information and belief, Aggrieved Employees were required
27 to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-
28 related phone calls and/or messages they received to their phones and/or mobile devices and were

1 required to respond to, including but not limited to, communications from supervisors regarding
2 scheduling and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved
3 Employees.

4 55. Based on information and belief, DEFENDANTS failed to pay Aggrieved
5 Employees the applicable minimum wage for the county and/or city within which the NON-
6 EXEMPT AGGRIEVED EMPLOYEE worked in California.

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

10 57. For example, based on information and belief, at times, DEFENDANTS required
11 PLAINTIFF and/or other Aggrieved Employees to work two separate shifts in the same day.

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

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

28 60. Based on information and belief, DEFENDANTS failed to pay Aggrieved

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

5 61. Based on information and belief, DEFENDANTS implemented a time-rounding
6 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
7 compensable time because the time-rounding system implemented by DEFENDANTS would
8 almost always, if not always, result in understating actual compensable work time.

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

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

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

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

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

7 67. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF and
8 other Aggrieved Employees all owed overtime wages due to DEFENDANTS' policy and practice
9 of scheduling PLAINTIFF and other Aggrieved Employees for split shifts and thus only paying
10 premium wages, if at all, for time worked beyond eight (8) hours in a shift while failing to pay all
11 premium wages for all time worked beyond eight (8) hours in a workday, resulting in denied
12 overtime wages owed to PLAINTIFF and other Aggrieved Employees.

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

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

27 70. For example, based on information and belief, Aggrieved Employees were forced to
28 take late meal periods in order to complete assigned job duties. Based on information and belief,

1 Aggrieved Employees were at times interrupted during purported meal periods and/or had meal
2 periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned
3 job duties.

4 71. For example, PLAINTIFF was frequently required to work through his meal period
5 completely, take interrupted and/or shortened meal periods and/or take his meal period late (i.e. after
6 working more than five (5) hours). For example, on at least approximately twelve (12) occasions
7 during PLAINTIFF's employment, PLAINTIFF was forced to work through his meal period
8 completely and/or take his meal period late due to the need to complete his assigned job duties,
9 including but not limited to, complete deliveries and/or drive to assigned locations. For example,
10 DEFENDANTS' time records for PLAINTIFF show that PLAINTIFF worked shifts lasting more
11 than five and one-half hours without clocking out for any meal period on including but not limited
12 to the following dates: 6/21/22 (showing 5.55 hours worked without any meal period), 6/14/22
13 (showing 5.47 hours worked without any meal period), 12/22/22 (showing 7.95 hours worked
14 without any meal period), 1/5/23 (showing 7.90 hours worked without any meal period), and 2/10/23
15 (showing 5.32 hours worked without any meal period). Notably, DEFENDANTS' wage statements
16 for PLAINTIFF for the pay periods inclusive of those dates do not show the payment of a single
17 meal period premium.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 86. For example, PLAINTIFF was frequently, if not always, required to work through
21 part or all of his owed rest periods each shift due to the need to complete assigned job duties,
22 including but not limited to, complete assigned deliveries and/or return to DEFENDANTS' assigned
23 location(s) according to DEFENDANTS' designated schedule.

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

28 88. Moreover, based on information and belief, DEFENDANTS failed to provide any

1 form of a third rest period on shifts lasting longer than ten hours.

2 89. Based on information and belief, DEFENDANTS implemented policies and/or
3 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
4 DEFENDANTS' control during rest periods.

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

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

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

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

28 94. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities

1 during their hours of work, particularly during meal and/or rest periods.

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

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

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

21 98. Based on information and belief, wage statements issued by DEFENDANTS failed
22 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid, in
23 violation of including but not limited to, Labor Code section 226(a)(2) and/or Labor Code section
24 226(a)(6). For example, based on information and belief, at times, DEFENDANTS issued wage
25 statements to Aggrieved Employees containing payment for hours worked during previous pay
26 periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate
27 pay period for that retroactive pay, further failing to list the total hours worked for the pay period,
28 including but not limited to, the total hours worked for the pay period the retroactive pay corresponds

1 with.

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

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

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

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

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

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

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

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

1 107. **Violation of Labor Code section 351 and 353.** Labor Code Section 351 prohibits
2 employers and their agents from sharing in or keeping any portion of a gratuity left for or given to
3 one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions
4 from gratuities, or from using gratuities as direct or indirect credits against an employee's wages.
5 Labor Code Section 353 mandates employers to keep accurate records of all gratuities received.

6 108. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
7 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS and their
8 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
9 Code Section 351. Based on further information and belief, DEFENDANTS also failed/fails to keep
10 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
11 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
12 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
13 Labor Code section 351.

14 109. Based on information and belief, DEFENDANTS charge an additional service
15 charge to their customers/patrons. Customers are led to believe that the service charge will be paid
16 to DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keeps a majority (if not the
17 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
18 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. See O'Grady v
19 Merchant Exchanges Production, Inc., 41 Cal.App.5th 771, 790 (a mandatory service charge can
20 constitute a gratuity that is intended to the employees providing the service).

21 110. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period
22 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
23 they experienced within the statutory period, and \$200 per pay period for each additional violation.

24 111. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
25 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
26 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
27 from Aggrieved Employees paychecks during the relevant period including without limitation,
28 deducting business costs and/or deducting wages for purported overpayments from previous pay

1 periods and/or unlawfully deducting wages for negligently damaged property and/or unlawfully
2 deducting transaction fees/pay/money card fees and/or deducting costs advanced by
3 DEFENDANTS. Such a practice is in violation of including but not limited to, Labor Code Sections
4 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

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

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

25 115. Based on information and belief, DEFENDANTS shifted the costs of doing business
26 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
27 to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of Aggrieved
28 Employees' personal cell phones/mobile devices, internet and/or data usage for work-related

1 purposes, including but not limited to, to receive and respond to work-related messages and/or phone
2 calls.

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

7 117. For example, DEFENDANTS required PLAINTIFF to use his personal cell
8 phone/mobile device for work, including but not limited to, to download and use navigational
9 applications/for navigational/GPS purposes during PLAINTIFF's assigned deliveries and to
10 communicate with DEFENDANTS' customers. However, DEFENDANTS failed to provide
11 PLAINTIFF with any and/or full reimbursement for the business expenses PLAINTIFF incurred in
12 connection with DEFENDANTS' requirement he use his personal cell phone/mobile device for
13 work, including without limitation, increased data plan charges.

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

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

24 120. As explained above, based on information and belief, Aggrieved Employees were
25 not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost
26 of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
27 protective/safety gear.

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

2 122. Based on information and belief, DEFENDANTS regularly failed to reimburse and
3 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
4 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
5 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
6 assigned by DEFENDANTS.

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

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

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

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

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

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

15 129. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
16 provides as follows:

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

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

1 in accordance with California law.

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

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

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

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

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

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

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

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

1 of seats would not interfere with the performance of their duties.

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

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

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

21 141. For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck
22 for at least approximately six (6) days following PLAINTIFF's date of termination, and
23 PLAINTIFF's late final paycheck was devoid of all wages owed, including without limitation, all
24 owed minimum wages, overtime wages, predictability pay wages, premium wages, vacation pay,
25 all owed sick leave and/or paid time off wages at the properly accrued rates, (including but not
26 limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary
27 compensation, including but not limited to, shift differentials).

28 142. Notably, DEFENDANTS failed to furnish PLAINTIFF with his vacation pay until

1 on or around April 22, 2024, nearly three (3) months following PLAINTIFF's separation of
2 employment with DEFENDANTS.

3 143. Based on further information and belief, DEFENDANTS failed to timely provide all
4 owed wages immediately upon discharge of employment. Based on information and belief, at times,
5 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
6 Aggrieved Employees would not be called in for work for longer than a single pay period due to
7 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
8 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
9 the end of such periods of employment, in violation of including but not limited to Labor Code
10 section 201-202.

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

15 145. Based on information and belief, DEFENDANTS have a policy and practice of
16 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
17 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
18 office or agency of DEFENDANTS in the county where the work was performed, in violation of
19 Labor Code Section 208.

20 146. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

21 Unlawful Agreements.

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

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

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

11 149. Based on further information and belief, DEFENDANTS knew that requiring
12 Aggrieved Employees to agree to unlawful meal period waivers as a condition of obtaining and/or
13 holding employment was unlawful.

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

17 Unlawful Inquires into Criminal History

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

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

27 Unlawful PAGA Waiver

28 153. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring

1 Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited
2 to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

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

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

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

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

26 158. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
27 engaged in these same herein described unlawful practices, which led to violations of the California
28 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described

1 unlawful practices to all of its employees that it applied to PLAINTIFF.

2 **FIRST CAUSE OF ACTION**
3 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
4 **2698, *ET SEQ.***

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

7 159. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

8 **Failure to Keep Accurate Records**

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

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

18 162. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
19 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
20 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
21 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
22 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
23 period during which the referenced statutes and Wage Order provisions were violated.²

24 **Meal Period Violations**

25 163. California law requires employers to provide employees a duty-free, uninterrupted
26 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and

27 ² Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”);
28 ;Labor Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which
the employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil
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 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and
2 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
3 *Court* (2012) 53 Cal.4th 1004.

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

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

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

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

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

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

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

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

15 172. These unlawful meal period policies and practices result in violations of Labor Code
16 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
17 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
18 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
19 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

20 **Rest Period Violations**

21 173. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
22 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
23 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
24 "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
25 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
26 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
27 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
28 1029). The rest period requirement obligates employers to permit and authorize employees to take

1 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
2 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
3 257. If the employer fails to provide any required rest period, the employer must pay the employee
4 one hour of pay at the employee's regular rate of compensation for each workday the employer did
5 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
6 applicable IWC Wage Order, §12(B).

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

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

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

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

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

8 179. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
9 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
10 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

11 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

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

2 **Minimum and Overtime Wage Violations**

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

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

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

23 187. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
24 Aggrieved Employees for all hours worked.

25 188. Based on information and belief, DEFENDANTS had actual or constructive
26 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
27 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and
28 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the

1 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
2 Employees.

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

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

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

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

23 193. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
24 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
25 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
26 Wage Orders, section 20.

27 **Statutory Wage Violations**

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

11 **Refusal to Make Payment**

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

20 **Standard Conditions of Labor Violations**

21 196. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
22 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
23 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
24 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
25 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,

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 minimum/overtime wages and other violations described herein result in separate violations of
2 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
3 1197.1 and 2699.

4 **Business Expense Violations**

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

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

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

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

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

1 202. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and other Aggrieved
2 Employees have suffered injury in that they were not completely reimbursed as mandated by
3 California law.

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

8 204. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
9 Employees have suffered injury in that they were not completely reimbursed as mandated by
10 California law.

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

15 **Wage Statement Violations**

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

25 207. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
26 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
27 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
28 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)

1 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
2 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
3 effect during the pay period and the corresponding number of hours worked at each hourly rate by
4 the employee, in violation of Labor Code section 226(a)(9).

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

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

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

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

1 entity that is the employer.

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

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

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

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

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

17 217. DEFENDANTS’ knowingly and intentionally failed to provide PLAINTIFF and
18 Aggrieved Employees with accurate, itemized wage statements.

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

28 219. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.

1 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
2 during which the statute provisions were violated. ⁴

3 **Violation of Labor Code section 351 and 353**

4 220. Labor Code Section 351 prohibits employers and their agents from sharing in or
5 keeping any portion of a gratuity left for or given to one or more employees by a patron.
6 Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using
7 gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353
8 mandates employers to keep accurate records of all gratuities received.

9 221. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
10 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS and their
11 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
12 Code Section 351. Based on further information and belief, DEFENDANTS also failed/fails to keep
13 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
14 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
15 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
16 Labor Code section 351.

17 222. Based on information and belief, DEFENDANTS charge an additional service
18 charge to their customers/patrons. Customers are led to believe that the service charge will be paid
19 to DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keeps a majority (if not the
20 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
21 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. See O'Grady v
22 Merchant Exchanges Production, Inc., 41 Cal.App.5th 771, 790 (a mandatory service charge can
23 constitute a gratuity that is intended to the employees providing the service).

24 223. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period
25 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
26 they experienced within the statutory period, and \$200 per pay period for each additional violation.

27
28

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

1 **Unlawful Deductions**

2 224. 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.

8 225. 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**

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

16 227. (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.

24 228. 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.

1 229. 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**

7 230. 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.

10 231. 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.

17 232. 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).

21 233. 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.

24 234. 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.

1 235. 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**

9 236. 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.

16 237. 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.

21 238. 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.

25 239. 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.

1 240. 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.

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

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

9 243. 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**

13 244. 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.

19 245. 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 to Aggrieved Employees upon separation of employment, in violation of California law, including
23 but not limited to, Labor Code section 227.3.

24 **Untimely Payment of Final Wages**

25 246. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
26 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
27 payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an
28 employee not having a written contract for a definite period quits his or her employment, his or her

1 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
2 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
3 to his or her wages at the time of quitting.”

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

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

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

19 **Violation of Labor Code Section 208**

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

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

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

2 *Unlawful Agreements.*

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

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

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

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

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

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

3 Unlawful Inquires into Criminal History

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

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

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

18 Unlawful PAGA Waiver

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

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

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

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

11 **Violation of Labor Code Section 432.6**

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

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

19 266. Labor Code Section 432.6(b) provides in pertinent part:

20 267. "An employer shall not threaten, retaliate, or discriminate against, or terminate any
21 applicant for employment or any employee because of the refusal to the waiver of any right..."

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

1 269. Under the provisions of PAGA and the above mentioned Labor Code sections,
2 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
3 226.7, 227.3, 245-248.6, 256, 351, 353, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5,
4 1194, 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as
5 well as all interpretations of these laws by California Courts and administrative bodies, as well as
6 any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
7 penalties:

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

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

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PRAYER FOR RELIEF

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

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

Dated: August 16, 2024

CROSNER LEGAL, PC

By: 

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FORRIST CANNADY