

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

8 Attorneys for Plaintiff DONALD CLEVENGER
on behalf of the State of California and all Aggrieved Employees

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

12 DONALD CLEVENGER, on behalf of the
State of California and all Aggrieved
Employees,

13 Plaintiff,

14
15 v.

16 TC CALIFORNIA HOSPITALITY LLC, a
17 California Limited Liability Company;
CORALTREE HOSPITALITY GROUP
18 LLC, a California Limited Liability
Company; and DOES 1-100, inclusive,

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

8/22/2024 1:10:43 PM

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

Case No.: 24CU007296C

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

1 Plaintiff, DONALD CLEVINGER, (“PLAINTIFF”), on behalf of the State of California
2 and all Aggrieved Employees (as defined below), hereby files this Complaint against Defendants
3 TC CALIFORNIA HOSPITALITY LLC, a California Limited Liability Company; CORALTREE
4 HOSPITALITY GROUP LLC, a California Limited Liability Company; and DOES 1-100,
5 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
6 believes and thereon alleges as follows:

7 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

23 **THE PARTIES**

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

26 5. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title
27 of market attendant and/or a similar title(s) and/or job position(s) from in or around 2020 and
28 continuing through the present. PLAINTIFF worked for DEFENDANTS at DEFENDANTS’ San

1 Diego, California location(s), which operates under the name(s) “Town & Country Resort” and/or
2 “Town and Country San Diego”.

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

6 7. Defendant CORALTREE HOSPITALITY GROUP LLC is a California Limited
7 Liability Company that, at all relevant times, was authorized to do business within the State of
8 California and is doing business in the State of California.

9 8. DEFENDANTS own, operate, manage and/or staff its employees to work at the
10 resorts, lifestyle hotels/hotels, residences, offices and/or facilities and/or other location(s) in
11 California, including but not limited to the resorts, lifestyle hotels/hotels, offices and/or facilities in
12 cities throughout California, including but not limited to, resorts, lifestyle hotels/hotels, offices,
13 facilities and/or other locations operating under the following brand name(s) and located in the
14 following California cities: “Terranea Resort” in Rancho Palos Verdes, California, “Tommy
15 Bahama Miramonte Resort & Spa” in Indian Wells, California; “Town & Country Resort” and/or
16 “Town and Country San Diego” in San Diego, California, “Hyatt Regency Sonoma Wine Country”
17 in Santa Rosa, California; “Galleria Park Hotel” in San Francisco, California. DEFENDANTS,
18 through its various locations serve the hospitality industry.¹

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

25 10. PLAINTIFF is further informed and believes that, at all relevant times, each
26 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
27 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or

28 ¹ See <https://www.coralreehospitality.com/> and <https://www.towncountry.com/>. Last visited on June 12, 2024.

1 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
2 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
3 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
4 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
5 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
6 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
7 controlled, aided and abetted the conduct of all other Defendants.

8 **JOINT LIABILITY**

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

26 12. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the
27 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of
28 the Wage Orders, under the alternative definitions of “to employ” adopted by the California

1 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
2 over wages, hours and working conditions of PLAINTIFF and the Aggrieved Employees; (2)
3 suffered or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged
4 PLAINTIFF and Aggrieved Employees to work for them.

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

18 14. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
19 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Aggrieved
20 Employees upon whose behalf PLAINTIFF brings these allegations and causes of action, in that
21 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
22 wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the Aggrieved
23 Employees to work so as to be considered the joint employers of PLAINTIFF and the Aggrieved
24 Employees. For example, DEFENDANTS, and each of them, maintain the same agent for service
25 of process and/or principal place of business and/or principal mailing address as provided to the
26 Secretary of State of California and/or the state of incorporation and/or based on information and
27 belief, maintain some of the same attorneys and/or human resources personnel to oversee
28 employment related matters.

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

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

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

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

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

PAGA ALLEGATIONS

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

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

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

COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS

22. PLAINTIFF, on June 7, 2024, through counsel, gave written notice by online filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged

1 in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via
2 certified mail.

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

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

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

14
15 **FACTUAL ALLEGATIONS**

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

20 27. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title
21 of market attendant and/or a similar title(s) and/or job position(s) from in or around 2020 and
22 continuing through the present.

23 28. PLAINTIFF worked for DEFENDANTS at DEFENDANTS’ San Diego, California
24 location(s), which operates under the name(s) “Town & Country Resort” and/or “Town and Country
25 San Diego”.

26 29. PLAINTIFF regularly worked at least six (6) to eight (8) hours per day, at least five
27 (5) days per week.

28 30. At all relevant times, PLAINTIFF₈ was a non-exempt employee that was paid on an
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 hourly basis for time counted by DEFENDANTS as hours worked.

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

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

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

18 34. For example, as explained above, based on information and belief, DEFENDANTS
19 would unlawfully edit the clock in and out times for Aggrieved Employees' meal periods in order to
20 display at least a thirty minute off-duty meal period during most if not all shifts worked,
21 notwithstanding the fact that DEFENDANTS had actual and/or constructive knowledge that
22 DEFENDANTS had required Aggrieved Employees' to perform work-related tasks during their
23 meal periods.

24 35. Based on information and belief, DEFENDANTS required Aggrieved Employees to
25 be at their assigned workstations at the start of a scheduled shift, thereby forcing Aggrieved
26 Employees to gather work-related equipment and/or safety gear, make any necessary adjustments
27 to tools/equipment and/or perform maintenance/cleaning tasks, don work clothing/uniforms and/or
28 protective equipment, and/or complete administrative tasks and/or complete other work tasks prior

1 to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-
2 clock work.

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

7 37. For example, based on information and belief, DEFENDANTS required Aggrieved
8 Employees to clock out for the end of their shifts but to continue working due to the need to
9 return/maintain tools, clean and/or organize their work stations/areas, provide shift status updates
10 and/or debriefings and/or participate in work meetings, respond to work-related communications
11 and/or complete administrative tasks and/or complete other work tasks off-the-clock, resulting in
12 the underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

13 38. Based on information and belief, DEFENDANTS did not compensate Aggrieved
14 Employees for time spent donning and doffing personal protective equipment and/or uniforms (e.g.,
15 rubber gloves, hairnets, aprons, hats, and/or face masks) during meal periods, before the start of a
16 scheduled shift, and/or after completing a scheduled shift, resulting in the underpayment of wages
17 owed to Aggrieved Employees.

18 39. Based on information and belief, at times, Aggrieved Employees were required to
19 complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-
20 related phone calls and/or messages they received to their phones/mobile devices and were required
21 to respond to, including but not limited to, communications from supervisors regarding scheduling
22 and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved Employees.

23 40. PLAINTIFF and other Aggrieved Employees were required to perform other off-the-
24 clock work for which they were not compensated.

25 41. For example, based on information and belief, at times, DEFENDANTS'
26 biometric/electronic employee time-keeping system malfunctioned such that Aggrieved Employees
27 were required to either reinitiate and/or otherwise troubleshoot the system prior to being able to
28 clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from

1 meal periods, resulting in off-the-clock work and the underpayment of wages owed to Aggrieved
2 Employees. Based on information and belief, Aggrieved Employees experienced the same issues
3 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
4 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
5 Aggrieved Employees.

6 42. Moreover, based on information and belief, Aggrieved Employees who opened their
7 work locations were required to first unlock the doors, turn on all the lights in the facility and/or
8 deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work and the
9 underpayment of wages owed to Aggrieved Employees. Based on further information and belief,
10 Aggrieved Employees in charge of closing their location(s) were required to first clock out for their
11 shifts before enabling the alarm, turning off all the lights in the facility and/or locking the doors.
12 This resulted in additional off-the-clock post-shift work that was not compensated and the
13 underpayment of wages owed to Aggrieved Employees.

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

17 44. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
18 Employees for all time spent completing DEFENDANTS' required trainings and/or courses (e.g.,
19 food safety and/or food handler courses) and/or testings and/or certifications (e.g., food handler
20 certifications).

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

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

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

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

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

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

27 50. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
28 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal

1 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
2 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
3 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
4 forty (40) hours in a week.

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

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

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

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

28 55. For example, based on information and belief, Aggrieved Employees were frequently

1 forced to take late meal periods in order to complete assigned job duties.

2 56. Based on information and belief, Aggrieved Employees were frequently, if not
3 always, interrupted during purported meal periods and/or required to work through their owed meal
4 periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises due to the
5 need to continue assigned job duties.

6 57. For example, at times, PLAINTIFF was required to work through his meal periods
7 and/or take his meal periods late (i.e. after working more than five (5) hours).

8 58. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF a proper
9 meal period penalty for each missed and/or otherwise legally non-compliant meal period. Based on
10 further information and belief, DEFENDANTS would unlawfully edit the clock in and out times for
11 Aggrieved Employees' meal periods in order to display at least a thirty minute, timely, off-duty meal
12 period during most if not all shifts worked, notwithstanding the fact that DEFENDANTS had actual
13 and/or constructive knowledge that DEFENDANTS had required Aggrieved Employees to perform
14 work-related tasks during their meal periods.

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

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

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

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

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

5 63. Moreover, per DEFENDANTS' uniform policy and practice, Aggrieved Employees
6 who worked shifts of more than ten hours did not receive a second legally compliant thirty (30)
7 minute second meal period.

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

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

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

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

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

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

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

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

16 72. For example, PLAINTIFF was frequently, if not always, required to work through
17 his owed rest periods each shifts due to the need to complete assigned job duties.

18 73. Moreover, DEFENDANTS expressly discouraged Aggrieved Employees from
19 taking compliant rest periods and/or any rest periods at all. Based on information and belief,
20 DEFENDANTS have a policy and practice of reprimanding and/or threatening to reprimand
21 Aggrieved Employees for attempting to take their owed rest periods, resulting in denied rest periods,
22 among other violations of California law.

23 74. Based on information and belief, Aggrieved Employees' rest periods were
24 interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and
25 constraints of their job duties, and/or due to commentary from supervisors/managers pressuring
26 them to skip rest periods completely or otherwise take non-compliant rest periods.

27 75. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
28 lasting longer than ten hours.

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

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

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

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

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

1 226(a).

2 81. As described herein, based on information and belief, DEFENDANTS also failed to
3 incorporate all forms of non-discretionary compensation earned during the pay period into the
4 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
5 of overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

19 85. Based on information and belief, DEFENDANTS shifted the costs of doing business
20 onto PLAINTIFF and other Aggrieved Employees requiring them to pay for business expenses,
21 including but not limited to, uniforms/work clothing/work shoes, personal protective/safety gear
22 and/or the use of Aggrieved Employees' personal mobile phone and data usage for work-related
23 purposes including but not limited to downloading and using work-related applications and/or
24 receiving and responding to work-related messages and/or phone calls. For example, on information
25 and belief, Aggrieved Employees received calls/messages to their personal cell phones/mobile
26 devices from supervisors and/or other employees regarding scheduling and/or other work tasks but
27 were not provided any and/or full reimbursement from DEFENDANTS for this personal cell phone
28 use.

1 86. For example, DEFENDANTS required PLAINTIFF to use his personal cell phone /
2 mobile device for work, including but not limited to, for downloading and regularly using work-
3 related applications.

4 87. For example, DEFENDANTS required PLAINTIFF to download onto his personal
5 cell phone/mobile device a work-related application for accessing his wage statements (e.g., UKG
6 Pro) and further required PLAINTIFF to download work-related application(s) for work scheduling
7 purposes and/or other work purposes. However, DEFENDANTS did not provide PLAINTIFF with
8 any and/or full reimbursement for the business expenses PLAINTIFF incurred in connection with
9 being required by DEFENDANTS to use his personal cell phone / mobile device(s) for work.

10 88. Based on information and belief, Aggrieved Employees were not reimbursed for the
11 cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or
12 maintaining work uniforms/work clothing/work shoes, personal protective/safety gear and/or work
13 tools (e.g., hand tools) and/or equipment required to carry out their assigned job duties.

14 89. For example, based on information and belief, Aggrieved Employees were not
15 reimbursed for the costs of purchasing and/or maintaining work uniforms/work clothing/work shoes,
16 personal protective/safety gear, such as, but not limited to, face masks, gloves, hairnets and/or work
17 shoes.

18 90. For example, DEFENDANTS required PLAINTIFF to purchase and/or maintain
19 uniforms, work clothing, work shoes and/or protective and/or safety gear (e.g., face masks) without
20 providing PLAINTIFF with any and/or full reimbursement for the business expenses PLAINTIFF
21 incurred in connection therewith.

22 91. For example, DEFENDANTS required PLAINTIFF to purchase and/or maintain
23 work shoes and/or other uniforms, work clothing and/or protective and/or safety gear (e.g., face
24 masks) without providing PLAINTIFF with any and/or full reimbursement for the business expenses
25 PLAINTIFF incurred in connection therewith.

26 92. Based on information and belief, at times, DEFENDANTS required Aggrieved
27 Employees to use their personal vehicles to carry out their assigned job duties without reimbursing
28 them for the personal vehicle expenses they incurred in connection therewith, including but not

1 limited to, mileage, cost of fuel and/or vehicle wear and tear.

2 93. 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 94. 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 95. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC
12 Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the
13 Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the
14 toilet rooms and shall be available to employees during work hours."

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

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

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

1 **99. Violation of Labor Code Sections 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 **100.** 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 its
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 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 **101.** Based on information and belief, DEFENDANTS charges an additional service
15 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
16 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep 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 **102.** 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 **103. 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.

5 104. **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.

13 105. 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.

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

1 107. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
2 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
3 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
4 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
5 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
6 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
7 used sick leave and the balance of paid sick leave.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 122. Upon separation of employment, Aggrieved Employees' final paychecks were not
23 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
24 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
25 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
26 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
27 accrued rates.

28 123. Based on further information and belief, DEFENDANTS failed to timely provide all

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

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

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

17 126. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

18 Unlawful Agreements.

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

28 128. Labor Code section 432.6(a), provides that "a person shall not, as a condition of
26
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

8 129. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
9 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
10 432.5.

11 Unlawful Inquires into Criminal History

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

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

21 Unlawful PAGA Waiver

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

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

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

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

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

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

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

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

138. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

1 **Failure to Keep Accurate Records**

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

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

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

17 **Meal Period Violations**

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

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

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

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

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

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

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

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

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

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

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

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

15 **Rest Period Violations**

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

1 applicable IWC Wage Order, §12(B).

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

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

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

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

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

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

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

6 **Failure to Provide Suitable Resting Facilities**

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

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

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

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

25 **Violation of Labor Code Sections 351 and 353**

26 163. Labor Code Section 351 prohibits employers and their agents from sharing in or
27 keeping any portion of a gratuity left for or given to one or more employees by a patron.
28 Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using

1 gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353
2 mandates employers to keep accurate records of all gratuities received.

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

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

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

21 **Minimum and Overtime Wage Violations**

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

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

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

14 170. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
15 Aggrieved Employees for all hours worked.

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

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

28 173. Based on information and belief, DEFENDANTS failed and continue to fail to pay

1 a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours
2 in a week.

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

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

14 176. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
15 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
16 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
17 Wage Orders, section 20.

18
19 **Statutory Wage Violations**

20 177. California Labor Code section 223 makes it unlawful for an employer to secretly pay
21 wages lower than required by statute while purporting to pay legal wages. As described above,
22 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
23 earned minimum and overtime compensation for all hours worked which resulted in the payment of
24 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
25 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
26 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
27 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
28 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved

1 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
2 Labor Code § 2699(f)-(g).

3 **Refusal to Make Payment**

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

12 **Standard Conditions of Labor Violations**

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

21 **Business Expense Violations**

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

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

11 182. Further, "any contract or agreement, express or implied, made by any employee to
12 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
13 any employee or his personal representative of any right or remedy to which he is entitled to under
14 the laws of this State." *See* Cal. Lab. Code section 2804.

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

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

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

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

28 187. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved

1 Employees have suffered injury in that they were not completely reimbursed as mandated by
2 California law.

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

7
8 **Wage Statement Violations**

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

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

26 191. Moreover, due to violations detailed above, including but not limited to,
27 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
28 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,

1 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
2 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
3 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
4 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
5 compensation earned during the pay period into the regular rate of pay for purposes of calculating
6 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
7 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

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

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

28 197. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as

1 they could not easily determine whether they received all wages owed to them and whether they
2 were paid for all hours worked.

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

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

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

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

20
21 **Unlawful Deductions**

22 202. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
23 an employee any part of wages theretofore paid by said employer to said employee." Based on
24 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
25 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
26 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
27 Section 2699.

28

⁴ Labor Code § 226.3 (establishing that the civil penalty is ~~4~~ ¹ per employee per violation").

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

7 **Reporting Time Pay Violations**

8 204. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

27 **Seating Violations**

28 208. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be

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

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

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

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

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

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

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

23 213. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
24 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
25 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
26 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
27 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
28 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each

1 Aggrieved Employee, results in a separate civil penalty.

2 **Sick Leave Violations**

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

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

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

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

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

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

1 220. On information and belief, PLAINTIFF alleges that all of these practices were
2 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

18 **Untimely Payment of Final Wages**

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

26 225. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
27 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
28 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.

1 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
2 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also,
3 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

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

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

13 **Violation of Labor Code Section 208**

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

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

23 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

24 *Unlawful Agreements.*

25 230. Labor Code section 432.5 provides that “no employer...shall require any employee
26 or applicant for employment to agree, in writing, to any term or condition which is known by such
27 employer...to be prohibited by law.” Based on information and belief, DEFENDANTS required
28 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not

1 limited to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or
2 nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful
3 meal period waivers, unlawful commissions agreements, unlawful forum selection clauses and/or
4 choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition
5 of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

14 232. 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

18 233. 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.

22 234. 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.

27 235. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
28 Code section 432.7. By asking about convictions at the application phase or prior to extending an

1 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
2 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
3 disclose arrests and/or convictions as a condition of employment.

4 Unlawful PAGA Waiver

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

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

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

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

25 Violation of Labor Code Section 432.6

26 240. Based on information and belief, DEFENDANTS required Aggrieved Employees to
27 sign meal period waivers that were universally signed as a condition of employment, including but
28 not limited to, during the onboarding process. Further, these invalid waivers are otherwise unlawful

1 under Labor Code section 432.6.

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

5 242. Labor Code Section 432.6(b) provides in pertinent part:

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

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

15 245. Under the provisions of PAGA and the above mentioned Labor Code sections,
16 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
17 226.7, 227.3, 245-248.6, 256, 351, 353, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5,
18 1194, 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well
19 as all interpretations of these laws by California Courts and administrative bodies, as well as any
20 other law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 21 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
22 relevant California Labor Code provisions listed herein only if permitted by the
23 PAGA statute, pursuant to Labor Code section 2699(a); and
24 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
25 violations without a civil penalty recoverable under the PAGA, all in the default
26 amounts provided by Labor Code section 2699(f).
27 c. The proper measure of penalties under PAGA is the number of violations,
28 whether those violations were committed as against PLAINTIFF or any

1 Aggrieved Employee, whether a party to this action or not.

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

4 **PRAYER FOR RELIEF**

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

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

14 Dated: August 22, 2024

CROSNER LEGAL, PC

15
16 By: _____



Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff
DONALD CLEVENGER