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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES**

ISMAEL CRUZ and PRINCE RAY, as
 individuals and on behalf of all other
 similarly situated Class Members,

Plaintiff,

v.

HENKELS & MCCOY WEST, LLC, a
 Florida Limited Liability Company;
 HENKELS & MCCOY, INC., a
 Pennsylvania Corporation; and DOES 1-
 100, inclusive,

Defendants.

Case No.: 24STCV29074

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Paid Sick Leave Violations**
6. **Failure to Furnish Accurate Itemized Wage Statements**
7. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
8. **Failure to Reimburse Business Expenses**
9. **Unfair Competition; and**
10. **Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 et seq.)**

DEMAND FOR JURY TRIAL

FILED
 Superior Court of California
 County of Los Angeles

06/22/2026

David W. Slayton, Executive Officer / Clerk of Court

By: J. Nunez Deputy

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10 *Attorneys for Plaintiff Prince Ray*

1 Plaintiffs, ISMAEL CRUZ and PRINCE RAY (“PLAINTIFFS”), as individuals and on
2 behalf of all other similarly situated Class Members (as defined below), hereby files this First
3 Amended Complaint against Defendants HENKELS & MCCOY WEST, LLC, a Florida Limited
4 Liability Company; HENKELS & MCCOY, INC., a Pennsylvania Corporation; and DOES 1-100,
5 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFFS are informed and
6 believe and thereon allege as follows:

7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is
9 proper in the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5
10 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
11 PLAINTIFFS to work in this judicial district and some of the acts, omissions, and conduct alleged
12 by PLAINTIFFS herein occurred in this this judicial district. Venue is also proper pursuant to
13 section 393 of the California Code of Civil Procedure because the cause, or some part of the cause,
14 arose in the County of Los Angeles.

15 **THE PARTIES**

16 **A. Plaintiff Ismael Cruz**

17 2. PLAINTIFF CRUZ is, and at all relevant times, was an individual domiciled in the
18 State of California and a citizen of the State of California.

19 3. PLAINTIFF CRUZ worked for DEFENDANTS as a non-exempt employees with a
20 job title(s) of maintenance worker and/or a similar title(s) and/or job position(s): from in or around
21 August 2013 through in or around July 2024.

22 **B. Plaintiff Prince Ray**

23 4. PLAINTIFF RAY is an individual over 18 years of age who worked for
24 DEFENDANTS in California as a non-exempt employee from about November 2019 to July 2024.
25 Plaintiff worked as a Gas Tech

26 **C. Defendants**

27 5. DEFENDANT HENKELS & MCCOY WEST, LLC is a Florida Limited Liability
28 Company that, at all relevant times, was authorized to do business within the State of California and

1 is doing business in the State of California.

2 6. DEFENDANT HENKELS & MCCOY, INC. is a Pennsylvania Corporation that, at
3 all relevant times, was authorized to do business within the State of California and is doing business
4 in the State of California.

5 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the sites,
6 facilities and/or other location(s) in California, including but not limited to, Pomona, California, and
7 other cities throughout California. DEFENDANTS, through its various locations, serve including
8 but not limited to, utility and/or communications industry. Although DEFENDANTS may operate
9 successful companies or have a noble mission, DEFENDANTS do not comply with California's
10 labor laws.

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

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

1 **JOINT LIABILITY**

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

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

26 12. PLAINTIFFS are informed and believe, and thereon alleges that at all relevant times
27 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
28 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices

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

11 13. PLAINTIFFS are informed and believe, and thereon allege that at all times relevant
12 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFFS and the Class
13 Members upon whose behalf PLAINTIFFS bring these allegations and causes of action, in that
14 DEFENDANTS, exercised sufficient control over PLAINTIFFS and the Class Members' wages,
15 hours and working conditions, and/or suffered or permitted PLAINTIFFS and the Class Members
16 to work so as to be considered the joint employers of PLAINTIFFS and the Class Members.

17 14. For example, based on information and belief, DEFENDANTS, and each of them,
18 maintain the same agent for service of process, principal business office/ mailing address as provided
19 to the California Secretary of State/ Secretary of State of the State of Incorporation and/or share some
20 of the same attorneys and/or human resources personnel to oversee employment-related matters.
21 Also, wage statements issued by DEFENDANTS identify Henkels & McCoy West, LLC as the
22 name of the legal entity that is PLAINTIFFS' employer. Moreover, documents contained in
23 DEFENDANTS' personnel files for PLAINTIFFS, including without limitation, employment-
24 related policies/agreements, DEFENDANTS' pay registry for PLAINTIFFS and/or other
25 employment-related documents identify "Henkels & McCoy" and/or "Henkels & McCoy, Inc." as
26 the name of PLAINTIFFS' employer.

27 15. Upon information and belief, PLAINTIFFS allege that DEFENDANTS created a
28 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,

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

13 16. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
14 and working conditions of PLAINTIFFS and Class Members. As such, DEFENDANTS collectively
15 held the right to control virtually every aspect of PLAINTIFFS' and the Class Members'
16 employment, including the instrumentality that resulted in the illegal conduct for which
17 PLAINTIFFS seek relief in this Complaint.

18 17. PLAINTIFFS are informed and believe that DEFENDANTS exercised the same
19 control over, applied the same policies and practices, and engaged in the same acts and omissions
20 with regard to the other Class Members.

21 **CLASS ALLEGATIONS**

22 18. PLAINTIFFS bring this action on behalf of PLAINTIFFS, and all others similarly
23 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFFS
24 seek to represent are defined as follows and referred to as the "Class" or "Class Members":

25 All current and former non-exempt employees that worked either
26 directly or via a staffing agency for any one or more of the
27 DEFENDANTS at any location in California at any time within the
28 four years prior to the filing of the initial Complaint ("Class Period").

- 1 a. Numerosity. While the exact number of Class Members is unknown to
2 PLAINTIFFS at this time, the Class is so numerous that the individual joinder
3 of all members is impractical under the circumstances of this case. PLAINTIFFS
4 are informed and believe the Class consists of at least 50 individuals.
- 5 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
6 because common questions of law and fact predominate over individual issues.
7 Common questions include, but are not limited to, the following: (1) whether
8 DEFENDANTS understated hours worked and failed to pay all amounts due to
9 PLAINTIFFS and the Class Members for wages earned, including minimum
10 and overtime wages, under California law; (2) whether DEFENDANTS
11 provided PLAINTIFFS and the Class Members with all meal periods or
12 premium payments in lieu thereof in compliance with California law; (3)
13 whether DEFENDANTS provided PLAINTIFFS and the Class Members with
14 all rest periods or premium payments in lieu thereof, in compliance with
15 California law; (4) whether DEFENDANTS committed paid sick leave
16 violations; (5) whether DEFENDANTS provided PLAINTIFFS and Class
17 Members with accurate, itemized wage statements in compliance with
18 California law, displaying, including but not limited to, the total hours worked
19 during the pay period; (6) whether DEFENDANTS timely paid PLAINTIFFS
20 and the Class Members all wages due upon separation of employment; (7)
21 whether DEFENDANTS failed to reimburse PLAINTIFFS and the Class
22 Members for all business expenses; and (8) whether DEFENDANTS violated
23 California Business and Professions Code sections 17200, *et seq.*
- 24 c. Ascertainable Class. The proposed Class is ascertainable as members can be
25 identified and located using information in DEFENDANTS' business, payroll
26 and personnel records.
- 27 d. Typicality. PLAINTIFFS' claims are typical of the claims of the Class
28 Members. PLAINTIFFS suffered a similar injury as members of the Class as a

1 result of DEFENDANTS' common practices regarding, *inter-alia*, failure to
2 calculate and pay all owed minimum and overtime wages, failure to provide
3 proper meal periods and rest periods or premium compensation in lieu thereof,
4 failure to provide accurate wage statements, failure to reimburse business
5 expenses, and failure to timely pay all wages due upon separation of
6 employment.

7 e. Adequacy. PLAINTIFFS will fairly and adequately protect the interests of the
8 Class Members. PLAINTIFFS have no interests adverse to the interests of the
9 other Class Members. Counsels who represent PLAINTIFFS are competent and
10 experienced in litigating similar class action cases and are California lawyers in
11 good standing. Counsels for PLAINTIFFS have the experience and resources to
12 vigorously prosecute this case.

13 f. Superiority. A class action is superior to other available means for the fair and
14 efficient adjudication of this controversy since individual joinder of all members
15 of the class is impractical. Class action treatment will permit a large number of
16 similarly situated persons to prosecute their common claims in a single forum
17 simultaneously, efficiently, and without the unnecessary duplication of effort
18 and expense that numerous individual actions would engender. Furthermore, as
19 the damages suffered by each individual member of the Class may be relatively
20 small, the expenses and burden of individual litigation would make it difficult
21 or impossible for individual members of the Class to redress the wrongs done to
22 them, while an important public interest will be served by addressing the matter
23 as a class action. The cost to the court system of adjudication of such
24 individualized litigation would be substantial. Individualized litigation would
25 also present the potential for inconsistent or contradictory judgments. Finally,
26 the alternative of filing a claim with the California Labor Commissioner is not
27 superior, given the lack of discovery in such proceedings, the fact that there are
28 fewer available remedies, and the losing party has the right to a trial de novo in

1 the Superior Court.

2 **FACTUAL AND LEGAL ALLEGATIONS**

3
4 19. PLAINTIFFS worked for DEFENDANTS as a non-exempt employee with a job
5 title(s) of maintenance worker and/or a similar title(s) and/or job position(s): from in or around
6 August 2013 through in or around July 2024.

7 20. PLAINTIFFS regularly worked at least eight (8) hours per day, at least five (5) days
8 per week.

9 21. DEFENDANTS paid PLAINTIFFS an hourly rate for time counted by
10 DEFENDANTS as hours worked.

11 22. Based on information and belief, DEFENDANTS also compensated Class Members
12 with non-discretionary compensation including but not limited to, shift differential pay, non-
13 discretionary bonus/incentive pay and/or other non-discretionary compensation.

14 23. For example, DEFENDANTS compensated PLAINTIFFS with non-discretionary
15 bonus/incentive pay and/or other non-discretionary compensation.

16 24. At all relevant times, PLAINTIFFS were non-exempt employees that were paid on
17 an hourly basis for time counted by DEFENDANTS as hours worked.

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

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

1 PLAINTIFFS and Class Members of all wages owed.

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

5 28. For example, based on information and belief, DEFENDANTS rounded
6 PLAINTIFFS' and other Class Members' total hours worked to at least the nearest quarter, half
7 and/or whole hour, resulting in DEFENDANTS' failure to compensate PLAINTIFFS and other
8 Class Members for all hours worked and the underpayment of wages owed to PLAINTIFFS and
9 other Class Members.

10 29. For example, DEFENDANTS' wage statement(s) issued to PLAINTIFF CRUZ for
11 including but not limited to the following pay period end dates demonstrate DEFENDANTS
12 rounded PLAINTIFF CRUZ'S total hours worked to at least the nearest quarter, half and/or whole
13 hour during most if not all pay periods PLAINTIFF CRUZ worked during PLAINTIFF CRUZ'S
14 employment, resulting in DEFENDANTS' failure to compensate PLAINTIFF CRUZ for all hours
15 worked and the underpayment of wages owed to PLAINTIFF CRUZ: pay period ending on 6/30/24
16 showing precisely 40.00 regular hours worked and precisely 10.50 overtime hours worked; pay
17 period ending on 3/24/24 showing precisely 40.00 regular hours worked and precisely 6.50 overtime
18 hours worked; pay period ending on 3/10/24 showing precisely 40.00 regular hours worked and
19 precisely 20.00 overtime hours worked; pay period ending on 2/18/24 showing precisely 40.00
20 regular hours and precisely 10.50 overtime hours worked; and pay period ending on 1/21/24
21 showing precisely 36.00 regular hours worked and precisely 8.00 overtime hours worked. Based
22 on information and belief, DEFENDANTS rounded PLAINTIFFS' total hours worked to at least
23 the nearest quarter, half and/or whole hour during most if not all pay periods during PLAINTIFFS'
24 employment, resulting in DEFENDANTS' consistent failure to compensate PLAINTIFFS for all
25 hours worked and the underpayment of minimum wages and overtime wages owed to PLAINTIFFS.

26 30. Based on information and belief, PLAINTIFFS and other Class Members were
27 required to complete pre-shift and post-shift off-the-clock work due in part to DEFENDANTS'
28 failure to record the true shift start times and shift end times.

1 31. For example, DEFENDANTS' time records for PLAINTIFF CRUZ for 2024
2 consistently show a total daily hours worked of eight (8) with the same precise shift start time(s)
3 usually of 6:00 a.m. or 5:00 a.m. and always rounded to the nearest hour and/or half hour and
4 typically showing the same precise shift end time of 3:00 or 3:30 p.m., again always rounded to the
5 nearest hour and/or half hour. Based on information and belief, DEFENDANTS instructed
6 PLAINTIFFS and other Class Members to record their scheduled shift start time and end times
7 regardless of when PLAINTIFFS and other Class Members actually started and stopped working on
8 those days, which resulted in significant off-the-clock work and the underpayment of wages owed
9 to PLAINTIFFS and other Class Members.

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

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

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

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

8 36. Based on information and belief, Class Members were also pressured to complete at
9 least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals and
10 expectations.

11 37. For example, based on information and belief, Class Members were required to
12 complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-
13 related phone calls and/or messages they received to their phones and/or mobile devices and were
14 required to respond to, including but not limited to, communications from supervisors regarding
15 scheduling and/or other work tasks, resulting in the underpayment of wages owed to Class Members.

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

21 39. Based on information and belief, DEFENDANTS implemented a time-rounding
22 system that as applied systematically deprived PLAINTIFFS and other Class Members of
23 compensable time because the time-rounding system implemented by DEFENDANTS would
24 almost always, if not always, result in understating actual compensable work time.

25 40. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
26 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
27 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
28 minimum wages owed to PLAINTIFFS and Class Members as well as unpaid overtime wages for

1 those Class Members who worked more than eight (8) hours in a day and/or more than forty (40)
2 hours in a week.

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

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

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

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

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

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

1 in a week.

2 47. Based on information and belief, DEFENDANTS failed and continue to fail to pay
3 Class Members two times their regular rate of pay for time worked beyond twelve (12) hours per
4 workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a
5 work week, in violation of California's overtime laws.

6 48. Based on information and belief, DEFENDANTS failed to incorporate all non-
7 discretionary remuneration, including but not limited to, shift differential pay, piece
8 rate/commission compensation, bonus pay/incentive pay, multiple base rates of pay and/or other
9 non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
10 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
11 Class Members.

12 49. For example, as described herein, based on information and belief, DEFENDANTS
13 compensated PLAINTIFFS and other Class Members with non-discretionary bonus/incentive pay
14 and/or other non-discretionary compensation during pay periods in which PLAINTIFF and other
15 Class Members worked overtime, however, DEFENDANTS failed to incorporate all non-
16 discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting
17 in the miscalculation and underpayment of overtime wages owed to PLAINTIFFS and other Class
18 Members.

19 50. Additionally, DEFENDANTS also violated California's overtime laws as to those
20 Class Members that were subject to an Alternative Workweek Schedule (AWS).

21 51. Based on information and belief, DEFENDANTS adopted an Alternative Workweek
22 Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected
23 and/or implemented in accordance with the requirements of California law and/or DEFENDANTS
24 failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws,
25 including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor
26 Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an
27 AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

28 52. (C) Election Procedures Election procedures for the adoption and repeal of

1 alternative workweek schedules require the following: (1) Each proposal for an alternative
2 workweek schedule shall be in the form of a written agreement proposed by the employer. The
3 proposed agreement must designate a regularly scheduled alternative workweek in which the
4 specified number of workdays and work hours are regularly recurring. The actual days worked
5 within that alternative workweek schedule need not be specified. The employer may propose a single
6 work schedule that would become the standard schedule for workers in the work unit, or a menu of
7 work schedule options, from which each employee in the unit would be entitled to choose. If the
8 employer proposes a menu of work schedule options, the employee may, with the approval of the
9 employer, move from one menu option to another. (2) In order to be valid, the proposed alternative
10 workweek schedule must be adopted in a secret ballot election, before the performance of work, by
11 at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held
12 during regular working hours at the employees' work site. For purposes of this subsection, "affected
13 employees in the work unit" may include all employees in a readily identifiable work unit, such as
14 a division, a department, a job classification, a shift, a separate physical location, or a recognized
15 subdivision of any such work unit. A work unit may consist of an individual employee as long as
16 the criteria for an identifiable work unit in this subsection is met. (3) Prior to the secret ballot vote,
17 any employer who proposed to institute an alternative workweek schedule shall have made a
18 disclosure in writing to the affected employees, including the effects of the proposed arrangement
19 on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly
20 noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the
21 alternative workweek schedule. An employer shall provide that disclosure in a non- English
22 language, as well as in English, if at least five (5) percent of the affected employees primarily speak
23 that non-English language. The employer shall mail the written disclosure to employees who do not
24 attend the meeting. Failure to comply with this paragraph shall make the election null and void. (4)
25 Any election to establish or repeal an alternative workweek schedule shall be held at the work site
26 of the affected employees. The employer shall bear the costs of conducting any election held
27 pursuant to this section. Upon a complaint by an affected employee, and after an investigation by
28 the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral

1 third party to conduct the election. (5) Any type of alternative workweek schedule that is authorized
2 by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3)
3 of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of
4 the affected employees shall be required to reverse the alternative workweek schedule. The election
5 to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is
6 submitted to the employer, except that the election shall be held not less than 12 months after the
7 date that the same group of employees voted in an election held to adopt or repeal an alternative
8 workweek schedule. The election shall take place during regular working hours at the employees'
9 work site. If the alternative workweek schedule is revoked, the employer shall comply within 60
10 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may
11 grant an extension of time for compliance. (6) Only secret ballots may be cast by affected employees
12 in the work unit at any election held pursuant to this section. The results of any election conducted
13 pursuant to this section shall be reported by the employer to the Office of Policy, Research and
14 Legislation within 30 days after the results are final, and the report of election results shall be a
15 public document. The report shall include the final tally of the vote, the size of the unit, and the
16 nature of the business of the employer. (7) Employees affected by a change in the work hours
17 resulting from the adoption of an alternative workweek schedule may not be required to work those
18 new work hours for at least 30 days after the announcement of the final results of the election. (8)
19 Employers shall not intimidate or coerce employees to vote either in support of or in opposition to
20 a proposed alternative workweek.

21 53. No employees shall be discharged or discriminated against for expressing opinions
22 concerning the alternative workweek election or for opposing or supporting its adoption or repeal.
23 However, nothing in this section shall prohibit an employer from expressing his/her position
24 concerning that alternative workweek to the affected employees. A violation of this paragraph shall
25 be subject to Labor Code § 98 et seq.

26 54. On information and belief, PLAINTIFFS allege that DEFENDANTS failed to
27 comply with the above procedures, and thus, failed to properly institute an alternative workweek for
28 the purpose of obtaining a lawful exemption from overtime premiums for its mandated alternative

1 workweek schedule.

2 55. Based on information and belief, DEFENDANTS also failed to report the results to
3 the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the purported
4 election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This
5 conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage
6 Orders. These violations subject employer to civil penalties under Labor Code §§ 558 and 2699,
7 and All Applicable Wage Orders.

8 56. Moreover, to the extent there was an AWS that was properly adopted,
9 DEFENDANTS violated California's overtime laws as to Class Members that were subject to an
10 Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the agreed
11 upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee to
12 work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay
13 the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's
14 regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is
15 required to work the reduced hours." See Section 3 of all applicable Wage Orders.

16 57. Based on information and belief, at times during Class Members' respective
17 employments by DEFENDANTS, Class Members worked subject to an alternative work week
18 schedule. Based on information and belief, at times, Class Members that were subject to an AWS,
19 were sent home early and/or worked less hours than those that were scheduled under the AWS. On
20 such shortened shifts, Class Members were entitled to overtime pay at 1.5 times the regular rate of
21 pay after the first eight hours of work. Instead, DEFENDANTS paid Class Members their base rate
22 for all hours worked on the shortened shift(s) in violation of the alternative workweek schedule, and
23 in violation of California Labor Code section 510, the applicable Wage Order, and Labor Code
24 section 1198. As such, Class Members that were subject to an AWS were also deprived of all owed
25 overtime wages when required to work shortened shifts.

26 58. **Meal Period Violations.** PLAINTIFFS and other Class Members consistently
27 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
28 However, PLAINTIFFS and other Class Members would not receive legally compliant thirty (30)

1 minute first and second meal periods.

2 59. Based on information and belief, Class Members were consistently unable to take
3 timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal
4 periods, interrupted meal periods, and/or work through part or all their meal periods due to
5 understaffing, the nature and constraints of their job duties and/or commentary from supervisors
6 pressuring them to take non-compliant meal periods or skip meal periods completely.

7 60. For example, based on information and belief, at times, Class Members were forced
8 to skip their owed meal periods completely, take late meal periods and/or were interrupted during
9 purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS'
10 premises and/or were otherwise required to remain on-duty during unpaid meal periods due to the
11 need to continue assigned job duties.

12 61. For example, at times, PLAINTIFFS were forced to take shortened, interrupted and
13 or late meal periods (i.e. after working more than five (5) hours) due to the need to complete assigned
14 job duties.

15 62. Moreover, based on information and belief, DEFENDANTS' time records for
16 PLAINTIFFS reflect a precisely one-hour meal period taken on the whole and/or half hour on many,
17 if not all days, PLAINTIFFS worked during PLAINTIFFS' employment. Based on information and
18 belief, DEFENDANTS rounded and/or automatically deducted precisely thirty-minutes and/or one
19 hour per shift for meal periods that were interrupted, cut short, on-duty and/or worked through
20 completely, resulting in meal period law violations as well as DEFENDANTS' failure to
21 compensate PLAINTIFFS for all hours worked and the underpayment of wages owed to
22 PLAINTIFFS.

23 63. PLAINTIFFS were consistently required to take late, shortened and/or interrupted
24 meal periods due to including but not limited to, the need to complete assigned job duties.

25 64. For example, DEFENDANTS' time records for PLAINTIFFS reflect a purported
26 meal period of precisely sixty-minutes always purportedly taken on the whole and/or half hour and
27 frequently taken *after* the fifth hour of work. By way of example, PLAINTIFF CRUZ took his meal
28 period *after* the fifth hour of work on including but not limited to the following dates: January 16,

1 2024, January 17, 2024, January 18, 2024, January 19, 2024, January 22, 2024, January 23, 2024,
2 January 24, 2024, January 25, 2024, January 26, 2024, January 29, 2024, January 30, 2024, January
3 31, 2024, February 1, 2024, February 5, 2024, February 6, 2024, February 7, 2024, February 8,
4 2024, and February 9, 2024.

5 65. Notably, DEFENDANTS' wage statements/pay records for PLAINTIFFS do not
6 show the payment of any meal period premiums paid to PLAINTIFFS for the pay periods inclusive
7 of the above-described dates on which PLAINTIFFS were required to take late, shortened,
8 interrupted and/or otherwise noncompliant meal periods, in violation of California meal period law.

9 66. Based on information and belief, other Class Members were consistently suffered
10 and permitted to take meal periods past the fifth hour of work and/or had their meal periods
11 interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to
12 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
13 the need to meet DEFENDANTS' goals and expectations.

14 67. Based on information and belief, DEFENDANTS implemented policies and/or
15 practices that failed to relieve Class Members of all duties and DEFENDANTS' control during
16 unpaid meal periods.

17 68. Based on information and belief, DEFENDANTS required Class Members to
18 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
19 into account when scheduling meal periods for Class Members. Based on information and belief,
20 meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

21 69. Based on information and belief, despite DEFENDANTS' failure to provide lawful
22 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
23 times of PLAINTIFFS' and other Class Members' meal periods and/or automatically deducting at
24 least thirty/sixty minutes per shift for missed and/or otherwise unlawful meal periods despite having
25 actual and/or constructive knowledge that PLAINTIFFS and other Class Members did not receive
26 lawful meal periods.

27 70. Moreover, per DEFENDANTS' uniform policy and practice, Class Members who
28 worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute

1 second meal period.

2 71. For example, when PLAINTIFF CRUZ worked more than ten (10) and/or twelve
3 (12) hours in a shift, PLAINTIFF CRUZ was typically, if not always, denied any version of a second
4 meal period.

5 72. For example, DEFENDANTS' time records for PLAINTIFF CRUZ for including
6 but not limited to the following date(s) show PLAINTIFF CRUZ worked more than ten (10) and/or
7 twelve (12) hours in a shift without clocking out for any second meal period: February 2, 2024.

8 73. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFFS
9 and other Class Members 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 74. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
13 records of the true start and end times of PLAINTIFFS' and Class Members' meal periods. Based
14 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 PLAINTIFFS and other Class
16 Members not being paid for all time worked as well as late and/or shortened meal periods. *See*
17 *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

18 75. 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 PLAINTIFFS and other Class Members, in violation
21 of California's meal period laws.

22 76. DEFENDANTS failed to pay PLAINTIFFS and other Class Members, an additional
23 hour of wages at their respective regular rates of compensation for each workday a lawful meal
24 period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each
25 workday a lawful meal period was not provided and/or failed to pay the proper meal period premium
26 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
27 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 **77. Rest Period Violations.** DEFENDANTS did not properly authorize and provide
2 PLAINTIFFS and other Class Members with legally compliant rest periods at a rate of every four
3 (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of
4 the work period, as required by law.

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

9 **79.** 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 **80.** For example, based on information and belief, Class Members were at times if not
13 always unable to take compliant rest periods due to their need to complete assigned job duties and/or
14 were unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest
15 periods restricted to DEFENDANTS' premises.

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

20 **82.** Based on information and belief, DEFENDANTS did not have a lawful policy,
21 instruction, or practice as to the taking, timing, or duty-free nature of rest periods.

22 **83.** For example, based on information and belief, DEFENDANTS failed to authorize
23 and permit rest periods that were a "net" ten minutes in a suitable rest area, and instead, to the extent
24 rest periods were provided, DEFENDANTS limited PLAINTIFFS and other Class Members to only
25 ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving
26 their work stations , in violation of California rest period law.

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

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

3 85. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
4 lasting longer than ten hours.

5 86. Based on information and belief, DEFENDANTS implemented policies and/or
6 practices that failed to relieve PLAINTIFFS and other Class Members of all duties and
7 DEFENDANTS' control during rest periods.

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

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

18 89. **Paid Sick Leave Violations.** DEFENDANTS knowingly and intentionally failed
19 in their affirmative obligation to pay sick leave wages to PLAINTIFFS and a paid sick leave subclass
20 in violation of Labor Code section 246 *et seq.* Paid sick leave earnings constitute wages for purposes
21 of California wage and hour law. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th
22 1094, 1103 ["Courts have recognized that 'wages' also include those benefits to which an employee
23 is entitled as a part of his or her compensation, including money, room, board, clothing, vacation
24 pay, and sick pay"].)

25 90. Labor Code section 246(l), in conjunction with Labor Code section 248 *et seq.*,
26 248.1, 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked
27 by class members, govern how Defendants were required to calculate paid sick leave.

28 91. DEFENDANTS failed to pay PLAINTIFFS and class members their paid sick leave

1 wages at one of the lawful rates set forth in the statute or ordinance because DEFENDANTS failed
2 to include in their sick leave calculation the additional remuneration received by PLAINTIFFS and
3 class members (i.e., at the regular rate of pay and/or calculated based on total wages earned).

4 92. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick
5 leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-
6 19 Supplemental Sick Leave wages to class members at the correct accrual rate or hourly pay rate
7 in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

8 93. As a result, DEFENDANTS violated the Labor Code and are liable to PLAINTIFFS
9 and Class Members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

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

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

25 96. As described herein, based on information and belief, DEFENDANTS also failed to
26 incorporate all forms of non-discretionary compensation earned during the pay period into the
27 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
28 of overtime worked by PLAINTIFFS and other Class Members.

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

5 98. Based on information and belief, DEFENDANTS issued wage statements to Class
6 Members that fail to accurately list all deductions, in violation of Labor Code section 226(a)(4).

7 99. For example, as explained herein, DEFENDANTS regularly failed to reimburse
8 PLAINTIFFS for business expenses, incurred by PLAINTIFFS each pay period, thereby deducting
9 business costs from PLAINTIFFS' earned wages each pay period, in violation of including but not
10 limited to, Labor Code Section 221, and further failing to itemize these deductions for business
11 costs, on PLAINTIFFS' wage statements, in violation of Labor Code Section 226(a)(4).

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

14 101. For example, based on information and belief, at times, DEFENDANTS issued wage
15 statements to Class Members containing payment for hours worked during previous pay periods,
16 yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate pay period
17 for that pay, further failing to list the total hours worked for the pay period, including but not limited
18 to, the total hours worked for the pay period the pay corresponds with, in violation of including but
19 not limited to, Labor Code section 226(a)(2) and/or 226(a)(6).

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

24 103. As a result, DEFENDANTS issued wage statements to PLAINTIFFS and Class
25 Members that were not accurate and did not include all of the statutorily required information. As
26 such, DEFENDANTS violated Labor Code section 226.

27 104. **Unreimbursed Business Expenses.** Based on information and belief,
28 DEFENDANTS required PLAINTIFFS and Class Members to incur business expenses as a direct

1 consequence of the performance of their job duties without providing reimbursement, in violation
2 of Labor Code section 2802. Based on information and belief, PLAINTIFFS and Class Members
3 were improperly required to provide and maintain work tools that are supposed to be the
4 responsibility of the employer.

5 105. Based on information and belief, DEFENDANTS shifted the costs of doing business
6 onto PLAINTIFFS and other Class Members requiring them to pay for business expenses, including
7 but not limited to, work-related hand tools/equipment, uniforms/work clothing/work shoes/personal
8 protective/safety gear, the use of Class Members' personal vehicles, and/or the use of Class
9 Members' personal cell phones/mobile devices, internet and/or data usage for work-related
10 purposes, including but not limited to, to receive and respond to work-related messages and/or phone
11 calls.

12 106. For example, based on information and belief, Class Members were required to
13 receive and respond to work-related calls and/or messages from supervisors and/or other employees
14 regarding scheduling and/or other work tasks but were not reimbursed by DEFENDANTS at all
15 and/or in full for these business expenses.

16 107. For example, DEFENDANTS required PLAINTIFFS to use their personal cell
17 phones/mobile devices/internet usage to carry out PLAINTIFFS' assigned job duties, including but
18 not limited to, to receive and respond to work-related calls and/or messages from supervisors and/or
19 other employees regarding scheduling and/or other work tasks, but PLAINTIFFS were not
20 reimbursed by DEFENDANTS at all and/or in full for these business expenses.

21 108. Based on information and belief, Class Members were not reimbursed for the cost of
22 purchasing and/or maintaining their own hand tools and/or equipment required to perform their
23 assigned job duties and/or for the costs of purchasing and/or maintaining work
24 uniforms/clothing/shoes and/or protective gear.

25 109. As explained above, based on information and belief, Class Members were not
26 reimbursed for the cost of using their personal phone(s)/mobile device(s) for work-related purposes
27 and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
28 protective/safety gear/hand tools/equipment.

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

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

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

14 113. Upon separation of employment, Class Members' final paychecks were not timely
15 provided, and/or were not timely provided with all owed vacation pay/ and/or paid time off and/or
16 did not include all wages owed.

17 114. Upon separation of employment, Class Members final paychecks were not timely
18 provided, were not timely provided with all owed vacation pay and/or paid time off and/or did not
19 include all wages owed as they were devoid of, including but not limited to, all owed minimum
20 wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off
21 wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time
22 off paid at the final rate including non-discretionary compensation, including but not limited to, all
23 owed shift differentials).

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

1 discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of
2 such periods of employment, in violation of including but not limited to Labor Code section 201-
3 202. As such, DEFENDANTS violated Labor Code sections 201 and/or 202, subjecting
4 DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256.

5 116. PLAINTIFFS are informed and believe and allege thereon that DEFENDANTS
6 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
7 same herein described unlawful practices to all of its employees that it applied to PLAINTIFFS.

8
9 **FIRST CAUSE OF ACTION**

10 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
11 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

12 117. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

13 118. It is fundamental that an employer must pay its employees for all time worked.
14 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
15 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
16 permits deductions from wages when the employer is required or empowered to do so by state or
17 federal law or when the deduction is expressly authorized in writing by the employee for specified
18 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223
19 prohibits the pay of less than a statutory or contractual wage scale.

20 119. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
21 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up
22 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
23 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
24 period is unlawful.

25 120. DEFENDANTS violated California’s minimum wage laws by failing to compensate
26 PLAINTIFFS and the Class Members for all hours worked by virtue of, among other things,
27 DEFENDANTS’ time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
28 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
and/or payment according to scheduled hours worked rather than actual hours worked (described

1 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
2 wages.

3 121. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFFS
4 and Class Members for all hours worked.

5 122. Based on information and belief, DEFENDANTS had actual or constructive
6 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
7 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
8 periods, policy and practice of payment according to scheduled work time rather than actual work
9 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
10 owed to PLAINTIFFS and other Class Members.

11 123. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
12 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
13 attorney's fees and costs, in an amount to be proved at trial.

14 **SECOND CAUSE OF ACTION**

15 **Recovery of Unpaid Overtime Wages**

16 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

17 124. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

18 125. Employees in California must be paid overtime, equal to one and one-half times the
19 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
20 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
21 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
22 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
23 consecutive day of work in a workweek, unless they are exempt.

24 126. PLAINTIFFS and the Class Members worked overtime hours for which they were
25 not compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time
26 rounding, automatic deduction for meal periods, off-the-clock/unpaid work completed during meal
27 periods, other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according
28 to scheduled hours worked rather than actual hours worked (described above), which resulted in the
failure to account for all hours worked and thus the denial of all owed overtime wages.

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

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

12 129. DEFENDANTS' conduct described above is in violation of California Labor Code
13 sections 510 and 1194 and all applicable Wage Orders.

14 130. PLAINTIFFS and the Class Members are entitled to recover all unpaid overtime
15 wages, plus attorney's fees and costs, in an amount to be proved.

16 **THIRD CAUSE OF ACTION**

17 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
18 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

19 131. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

20 132. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
21 DEFENDANTS were required to provide PLAINTIFFS and the Class Members with one 30-minute
22 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
23 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
24 waived, but only under the following circumstances: (1) if an employee's total work period in a day
25 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
26 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
27 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
28 waived by mutual consent of the employer and employee, but only if the first meal period was not
waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their

1 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
2 done so.

3 133. Employers must pay employees an additional hour of wages at the employees'
4 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
5 meal period, first meal period provided after five (5) hours, second meal period provided after 10
6 hours). Lab. Code § 226.7.

7 134. As explained above, PLAINTIFFS and other Class Members were consistently
8 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
9 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
10 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
11 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
12 periods completely.

13 135. Based on information and belief, DEFENDANTS had and continue to have a policy
14 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
15 minutes and/or sixty minutes per shift despite having actual and/or constructive knowledge that
16 PLAINTIFFS and Class Members did not receive compliant meal periods.

17 136. Moreover, based on information and belief, Class Members did not receive a timely,
18 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

19 137. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS had
20 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
21 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
22 violation of California's meal period laws.

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

28 139. As a result, under Labor Code section 226.7, PLAINTIFFS and the Class Members

1 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
2 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
3 all in an amount to be proved at trial.

4 **FOURTH CAUSE OF ACTION**

5 **Failure to Provide Rest Periods or Compensation in Lieu Thereof** 6 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

7 140. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

8 141. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
9 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
10 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
11 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
12 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
13 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
14 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
15 The rest period requirement obligates employers to permit and authorize employees to take off-duty
16 rest periods, meaning employers must relieve employees of all duties and relinquish control over
17 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

18 142. If the employer fails to provide any required rest period, the employer must pay the
19 employee one hour of pay at the employee's regular rate of compensation for each workday the
20 employer did not provide at least one legally required rest period, pursuant to Labor Code section
21 226.7.

22 143. PLAINTIFFS and the Class Members did not receive legally compliant, timely 10-
23 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
24 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
25 DEFENDANTS' control due to the nature and constraints of Class Members' job duties,
26 understaffing, and/or commentary from supervisors pressuring PLAINTIFFS and Class Members
27 to skip rest periods completely or otherwise take non-compliant rest periods.

28 144. Based on information and belief, DEFENDANTS implemented policies and/or
practices that failed to relieve PLAINTIFFS and other Class Members of all duties and employer

1 control during rest periods. Based on further information and belief, Class Members were pressured
2 to complete their work duties according to a designated schedule such that rest periods were only
3 taken once tasks were completed, and/or as time permitted.

4 145. As a result, PLAINTIFFS and Class Members did not receive legally compliant first,
5 second, or third rest periods as required by California law.

6 146. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
7 period premium to PLAINTIFFS and other Class Members for each workday in which there was a
8 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
9 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
10 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
11 regular rate of compensation for purposes of determining the owed rest period premium.

12 147. DEFENDANTS are therefore liable to PLAINTIFFS and the Class Members for one
13 hour of additional pay at the regular rate of compensation for each workday that a required rest
14 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
15 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
16 trial.

17 **FIFTH CAUSE OF ACTION**

18 **Paid Sick Leave Violations**

19 **(By PLAINTIFFS and the Class Member Against All DEFENDANTS)**

20 148. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

21 149. DEFENDANTS knowingly and intentionally failed in their affirmative obligation to
22 pay sick leave wages to PLAINTIFFS and a paid sick leave subclass in violation of Labor Code
23 section 246 et seq. Paid sick leave earnings constitute wages for purposes of California wage and
24 hour law. (Murphy v. Kenneth Cole Productions, Inc. (2007) 40 Cal.4th 1094, 1103 ["Courts have
25 recognized that 'wages' also include those benefits to which an employee is entitled as a part of his
26 or her compensation, including money, room, board, clothing, vacation pay, and sick pay"].)

27 150. Labor Code section 246(l), in conjunction with Labor Code section 248 et seq.,
28 248.1, 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked
by class members, govern how DEFENDANTS were required to calculate paid sick leave.

1 151. DEFENDANTS failed to pay PLAINTIFFS and Class Members their paid sick leave
2 wages at one of the lawful rates set forth in the statute or ordinance because DEFENDANTS failed
3 to include in their sick leave calculation the additional remuneration received by PLAINTIFFS and
4 Class Members (i.e., at the regular rate of pay and/or calculated based on total wages earned).

5 152. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick
6 leave, DEFENDANTS knowingly and intentionally failed in their affirmative obligation to pay
7 Covid-19 Supplemental Sick Leave wages to class members at the correct accrual rate or hourly pay
8 rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

9 153. As a result, DEFENDANTS violated the Labor Code and are liable to PLAINTIFFS
10 and Class Members for underpaid sick leave wages.

11 **SIXTH CAUSE OF ACTION**

12 **Failure to Furnish Accurate Itemized Wage Statements
(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

13 154. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

14 155. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
15 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
16 wage statement accurately stating the following:

17 (1) gross wages earned, (2) total hours worked by the employee,
18 except for any employee whose compensation is solely based on a
19 salary and who is exempt from payment of overtime under
20 subdivision (a) of Section 515 or any applicable order of the Industrial
21 Welfare Commission, (3) the number of piece-rate units earned and
22 any applicable piece rate if the employee is paid on a piece-rate basis,
23 (4) all deductions, provided that all deductions made on written orders
24 of the employee may be aggregated and shown as one item, (5) net
25 wages earned, (6) the inclusive dates of the period for which the
26 employee is paid, (7) the name of the employee and his or her social
27 security number, except that by January 1, 2008, only the last four
28 digits of his or her social security number or an employee
identification number other than a social security number may be
shown on the itemized statement, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

26 156. As DEFENDANTS failed to provide PLAINTIFFS and other Class Members with
27 meal and rest periods that complied with Labor Code section 226.7, the wage statements
28 DEFENDANTS issued to PLAINTIFFS and other Class Members failed and continue to fail to

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

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

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

24 159. Based on information and belief, wage statements issued by DEFENDANTS failed
25 to list all applicable hourly rates in effect during the pay period and the corresponding number of
26 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).
27 For example, as described herein, based on information and belief, DEFENDANTS failed to
28 incorporate all forms of non-discretionary compensation earned during the pay period into the

1 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
2 of overtime worked by Class Members.

3 160. Separately, and independent from the above allegations, DEFENDANTS issued
4 wage statements to PLAINTIFFS and Class Members that violate Labor Code section 226(a)(8), by
5 failing to list the correct name and/or address of the legal entity that is the employer.

6 161. Based on information and belief, wage statements issued by DEFENDANTS failed
7 to list the inclusive dates of the pay period for which the Class Member is being paid.

8 162. DEFENDANTS' failure to accurately list all hours worked on all wage statements
9 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
10 Members over whether they received all wages owed to them.

11 163. As a result, PLAINTIFFS and other Class Members have suffered injury as they
12 could not easily determine whether they received all wages owed to them and whether they were
13 paid for all hours worked.

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

17 165. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFFS and
18 Class Members with accurate, itemized wage statements.

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

28 167. Pursuant to California Labor Code section 226(e), PLAINTIFFS and Class Members

1 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
2 violation occurred and one hundred dollars per employee per violation for each subsequent pay
3 period, not to exceed an aggregate penalty of four thousand dollars per employee.

4 168. Pursuant to California Labor Code § 226(h), PLAINTIFFS and Class Members are
5 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
6 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
7 provide currently employed Class Members with inaccurate wage statements in violation of
8 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
9 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
10 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
11 with California Labor Code § 226(a).

12 169. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFFS and Class
13 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
14 attorneys' fees, and costs of suit.

15 **SEVENTH CAUSE OF ACTION**

16 **Failure to Timely Pay All Wages Due Upon Separation of Employment** 17 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

18 170. PLAINTIFFS incorporate all preceding paragraphs as if fully set forth herein.

19 171. 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."

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

27 173. Based on information and belief, DEFENDANTS failed and continue to fail to timely
28 pay final wages to PLAINTIFFS and Class Members upon separation of employment in violation
of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFFS and

1 Class Members do not include all wages owed as they are devoid of, including but not limited to,
2 all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave
3 and/or paid time off wages at the properly accrued rates.

4 174. Under Labor Code section 203, PLAINTIFFS and the Class Members who are no
5 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
6 pay, plus attorney's fees and costs, in an amount to be proved at trial.

7 **EIGHTH CAUSE OF ACTION**
8 **Failure to Reimburse Business Expenses**
9 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

10 175. PLAINTIFFS incorporates all preceding paragraphs as if fully alleged herein.

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

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

25 178. As described above, PLAINTIFFS and the Class Members were improperly required
26 to pay for business expenses that are legally the responsibility of the employer.

27 179. DEFENDANTS' failure to provide PLAINTIFFS and the Class Members with full
28 reimbursement for all reasonable expenses associated with carrying out their duties required that
PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in

1 violation of Labor Code section 2802.

2 180. As a result of DEFENDANTS' unlawful conduct, PLAINTIFFS and the Class
3 Members have suffered injury in that they were not completely reimbursed as mandated by
4 California law.

5 181. Pursuant to California Labor Code section 2802, PLAINTIFFS and the Class
6 Members are entitled to recover the full amount of reimbursable expenses due, in addition to
7 reasonable attorneys' fees, and costs of suit.

8 **NINTH CAUSE OF ACTION**

9 **Unfair Competition**

10 **(By PLAINTIFFS and the Class Members Against all DEFENDANTS)**

11 182. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

12 183. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
13 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
14 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
15 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
16 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
17 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
18 wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure
19 to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to
20 provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to,
21 including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
22 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
23 number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and
24 practices, payment according to scheduled hours worked and/or other off-the-clock work policies
25 and practices).

26 184. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
27 California Labor Code, DEFENDANTS have gained a competitive advantage over other
28 comparable companies doing business in the State of California that comply with their obligations
to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums

1 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
2 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
3 minimum and overtime wages and to pay all wages due upon separation of employment of their
4 employees.

5 185. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFFS
6 and Class Members have suffered injury in fact and lost money or property, as described in more
7 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
8 PLAINTIFFS and Class Members are entitled to restitution of all wages and other monies rightfully
9 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
10 unlawful and unfair business practices.

11 186. PLAINTIFFS also seeks an injunction against DEFENDANTS on behalf of the Class
12 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
13 engaging in each of the unlawful practices and policies set forth herein.

14 187. PLAINTIFFS also seeks an award of attorney's fees pursuant to Code Civ. Proc
15 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
16 by law.

17 TENTH CAUSE OF ACTION

18 Civil Penalties Under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*) 19 (By PLAINTIFFS and the Class Members Against all DEFENDANTS)

20 188. PLAINTIFFS incorporate all preceding paragraphs as if fully alleged herein.

21 189. PLAINTIFFS bring this cause of action as a proxy for the State of California on
22 behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act
23 ("PAGA"), codified as Labor Code section 2698 *et seq.*:

- 24 a. All current and former non-exempt employees who worked for DEFENDANTS
25 in California at any time from one year prior to the postmark date of the initial
26 PAGA notice through date of trial.

27 190. PLAINTIFFS reserve the right to amend, supplement, or add to this description of
28 aggrieved employees, according to proof.

1 191. The State of California, via the Labor and Workforce Development Agency
2 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (Kim v.
3 Reins Int’l California, Inc. (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the
4 plaintiff files suit is always the real party in interest.”])

5 192. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
6 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
7 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
8 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
9 civil action brought by an aggrieved employee on behalf of the employee and other current or former
10 employees against whom a violation of the same provision was committed pursuant to the
11 procedures specified in Section 2699.3”.

12 193. Any allegations regarding violations of the IWC Wage Orders are enforceable as
13 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
14 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

15 194. Labor Code section 2699.3 sets forth the procedure for commencing an action for
16 civil penalties under the PAGA.

17 195. On or about August 30, 2024, PLAINTIFF CRUZ paid the requisite PAGA filing fee
18 and provided written notice (by online electronic filing with the LWDA and by certified mail to
19 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to
20 support the alleged violations.

21 196. On or about October 7, 2024, PLAINTIFF RAY paid the requisite PAGA filing fee
22 and provided written notice (by online electronic filing with the LWDA and by certified mail to
23 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to
24 support the alleged violations.

25 197. A true and correct copy of PLAINTIFF RAY’s written PAGA notice, entitled
26 “Notice of Labor Code Violations” is attached hereto as **Exhibit 1**.

27 198. A true and correct copy of PLAINTIFF CRUZ’S written PAGA notice, entitled
28 “Notice of Labor Code Violations” is attached hereto as **Exhibit 2**.

199. To date, neither of PLAINTIFFS' counsels have received a response to Plaintiffs' written PAGA notices from the LWDA.

200. Within 33 calendar days of the postmark date of the notice sent by PLAINTIFFS, neither of PLAINTIFFS' counsels have received written notice by certified mail from any DEFENDANT providing a description of any actions taken to cure the alleged violations.

201. Now that at least 65 days have passed from PLAINTIFFS notifying DEFENDANTS of these violations, without notice of cure from DEFENDANTS or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to DEFENDANTS, PLAINTIFFS exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

202. PLAINTIFFS seek to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(k).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for relief and judgment, on behalf of PLAINTIFFS and Class Members as follows:

1. For an order that the action be certified as a class action;
2. For an order that PLAINTIFFS be appointed as class representatives;
3. For an order that counsels for PLAINTIFFS be appointed as class counsel;
4. For compensatory damages according to proof;
5. For liquidated damages according to proof;
6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFFS and the Class Members;
8. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, *et seq.*, of the California Business and Professions Code;
9. For an order enjoining DEFENDANTS from further acts of unfair competition;

- 1 10. For pre-judgment interest as permitted by law;
2 11. For attorney's fees and costs reasonably incurred; and
3 12. For such other and further relief that the Court deems just and proper.
4

5 Dated: June 17, 2026

CROSNER LEGAL, PC

6

7

By: /s/ Brandon Brouillette
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiffs,
ISMAEL CRUZ and PRINCE RAY

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Dated: June 17, 2026

Ferraro Vega Employment Lawyers, Inc.

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14

By: /s/ Nicola J. Ferraro
Nicolas J. Ferraro
Nicolas P. Ahadzadeh
ISMAEL CRUZ and PRINCE RAY

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Dated: June 17, 2026

By: /s/ Brandon Brouillette
 Brandon Brouillette, Esq.
 Zachary M. Crosner, Esq.
 Attorneys for Plaintiffs,
 ISMAEL CRUZ and PRINCE RAY

Ferraro Vega Employment Lawyers, Inc.

By: /s/ Nicola J. Ferraro
Nicolas J. Ferraro
Nicolas P. Ahadzadeh
ISMAEL CRUZ and PRINCE RAY

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EXHIBIT 1

PAGA Notice – Ismael Cruz



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (424) 335-5236
office: (866) 276-7637
fax: (310) 510-6429

August 30, 2024

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

CSC Lawyers Incorporating Service
Agent for Service of Process for:
**Henkels & McCoy West, LLC; Henkels &
McCoy, Inc.; Mastec West, LLC; Mastec
North America, Inc.; and Mastec
Industrial Corp.**

Attn: CA Registered Agent Authorized
Employees: Becky DeGeorge, Koy Saechao,
Lai Saevang, Nicole Stauss, Jenn Bautista,
Trudy Desbiens, Rebecca Vang, Wendy
Harris, Melissa Dekoven, Carolyn Valle, Kaci
Ransom, Kelli Shortte, Annette Kuhlman,
Brejet Stephens, Crystal Chapman, Janette
McIntyre, Jerome Suarez, Samantha Wiltz,
and Parid Kurbini
2710 Gateway Oaks Drive #150-N
Sacramento, CA 95833

Henkels & McCoy West, LLC

Attn: Mastec, Inc. Legal Dept
800 S. Douglas Road Suite 1200
Coral Gables, FL 33134

**Mastec, Inc.; Mastec West, LLC; Mastec
North America, Inc.; and Mastec
Industrial Corp.**

Attn: Human Resources / Legal Department

800 S. Douglas Road Suite 1200
Coral Gables, FL 33134

Henkels & McCoy, Inc.

Attn: Human Resources / Legal Department
985 Jolly Road
Blue Bell, PA 19422

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Henkels & McCoy West, LLC; Henkels & McCoy, Inc.; Mastec, Inc.; Mastec West, LLC; Mastec North America, Inc.; and Mastec Industrial Corp.
Date: August 30, 2024
Subject: *Ismael Cruz v. Henkels & McCoy West, LLC, et al.*

Introduction

This office represents PLAINTIFF, Ismael Cruz (hereinafter “PLAINTIFF”) in connection with PLAINTIFF’s claims under the California Labor Code. PLAINTIFF was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Henkels & McCoy West, LLC; Henkels & McCoy, Inc.; Mastec, Inc.; Mastec West, LLC; Mastec North America, Inc.; and/or Mastec Industrial Corp. (hereinafter, these entities and their managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, PLAINTIFF, on behalf of PLAINTIFF, and on behalf of all current and former non-exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of PLAINTIFF’s claims against DEFENDANTS. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and DEFENDANTS via certified mail to their Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State and/or the address of the Secretary of State of the State of incorporation and/or the entity address as provided on wage statements issued by DEFENDANTS to NON-EXEMPT AGGRIEVED EMPLOYEES.

This NOTICE also serves to demonstrate PLAINTIFF’s reasonable attempt at settlement with DEFENDANTS. If DEFENDANTS are interested in settling this matter before a lawsuit is filed, DEFENDANTS may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by PLAINTIFF to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—PLAINTIFF reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, DEFENDANTS are on notice that PLAINTIFF continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that DEFENDANTS intend to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the DEFENDANTS shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, PLAINTIFF will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which PLAINTIFF will base PLAINTIFF's claims, PLAINTIFF requests that the LWDA regard this NOTICE as written notice of PLAINTIFF's intent to seek civil penalties against DEFENDANTS.

PLAINTIFF, on behalf of PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that DEFENDANTS have violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 208, 216, 221-223, 226, 226.2, 226.7, 227.3, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 511, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2100-2112, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

PLAINTIFF is informed and believes and thereon alleges that at all relevant times DEFENDANTS and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized

control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

PLAINTIFF believes and hereon asserts that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

For example, based on information and belief, DEFENDANTS, and each of them, maintain the same agent for service of process, principal business office/ mailing address as provided to the California Secretary of State/ Secretary of State of the State of Incorporation and/or share some of the same attorneys and/or human resources personnel to oversee employment-related matters. Also, wage statements issued by DEFENDANTS identify Henkels & McCoy West, LLC as the name of the legal entity that is PLAINTIFF's employer. However, based on information and belief, documents contained in DEFENDANTS' personnel file for PLAINTIFF, including without limitation, employment-related policies/agreements and/or other employment-related documents identify "Henkels," "Henkels & McCoy" and/or "Mastec" as the name of PLAINTIFF's employer.

By reason of their status as joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. DEFENDANTS, at all relevant times, were an employer or person acting on behalf of employer(s) who violated PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

PLAINTIFF intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. PLAINTIFF will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. PLAINTIFF asks and demands that DEFENDANTS put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, PLAINTIFF also offers to DEFENDANTS to place those individuals on notice if DEFENDANTS voluntarily provides their contact information.

General Information

DEFENDANTS own, operate, manage and/or staff its employees to work at the manufacturing and/or processing centers, warehouse distribution centers, facilities and/or other location(s) in California, including but not limited to the manufacturing and/or processing centers, warehouse distribution centers, facilities and/or other locations in including but not limited to, Pomona, California, and other cities throughout California. DEFENDANTS, through its various locations, serve including but not limited to, the manufacturing industry.¹ Although DEFENDANTS may operate successful companies or have a noble mission, DEFENDANTS do not comply with California's labor laws.

PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title(s) of maintenance worker and/or a similar title(s) and/or job position(s) from in or around August 2013 through in or around July 2024. PLAINTIFF regularly worked at least eight (8) hours per day, at least five (5) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked. Based on information and belief, DEFENDANTS also compensated NON-EXEMPT AGGRIEVED EMPLOYEES with non-discretionary compensation including but not limited to, shift differential pay, non-discretionary bonus/incentive pay and/or other non-discretionary compensation. For example, DEFENDANTS compensated PLAINTIFF with non-discretionary bonus/incentive pay and/or other non-discretionary compensation.

Among other things, DEFENDANTS (1) failed and continue to fail to keep accurate and complete time records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continue to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continue to fail to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continue to refuse to make and/or falsely denied the amount of payments due to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continue to fail to place PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continue to fail to provide legally compliant wage statements to PLAINTIFF

¹ See <https://www.henkels.com/contact-us/locations>. Last visited on August 29, 2024.

and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continue to fail to reimburse PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of DEFENDANTS; (11) required and continue to require PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continue to inquire into PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (12) required and continue to require PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which allowed meal periods were provided each day.

Based on information and belief, DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of DEFENDANTS' time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by virtue of DEFENDANTS' failure to relieve PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, DEFENDANTS further failed, and continue to fail, to record the true start and end times of PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

Based on further information and belief, DEFENDANTS further failed and continue to fail, to record the true start and end times of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

Additionally, DEFENDANTS failed, and continue to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES.

DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

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

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

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe

² See Lab. Code §2699(f).

likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, DEFENDANTS failed to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and belief, DEFENDANTS failed and continue to fail to timely produce complete payroll and personnel records when requested by NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, PLAINTIFF did not sign a valid meal period waiver throughout PLAINTIFF's employment by DEFENDANTS.

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

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

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely.

For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were forced to skip their owed meal periods completely, take late meal periods and/or were interrupted during purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises and/or were otherwise required to remain on-duty during unpaid meal periods due to the need to continue assigned job duties.

For example, at times, PLAINTIFF was forced to take shortened, interrupted and or late meal periods (i.e. after working more than five (5) hours) due to the need to complete assigned job duties. Moreover, based on information and belief, DEFENDANTS' time records for PLAINTIFF reflect a precisely one-hour meal period taken on the whole and/or half hour (e.g., from precisely 12:00 PM to precisely 1:00 PM) on many, if not all days, PLAINTIFF worked during PLAINTIFF's employment. Based on information and belief, DEFENDANTS rounded and/or automatically deducted precisely thirty-minutes and/or one hour per shift for meal periods that were interrupted, cut short, on-duty and/or worked through completely, resulting in meal period law violations as well as DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and expectations.

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during unpaid meal periods.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

For example, based on information and belief, PLAINTIFF was forced to take late meal periods due to DEFENDANTS' failure to take into account pre-shift off-the-clock PLAINTIFF was required when scheduling any meal periods.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their policies and practices resulted in the denial of uninterrupted meal periods which were free of DEFENDANTS' control owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per DEFENDANTS' uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

Based on information and belief, despite DEFENDANTS' failure to provide lawful meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end times of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to DEFENDANTS' premises), despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

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

Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, DEFENDANTS did not have a compliant written meal break policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

PLAINTIFF is further informed and believes and thereon alleges that DEFENDANTS had actual and/or constructive knowledge that their time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay

the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ DEFENDANTS' failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufil v. Dollar Fin. Grp.*,

³ See Lab. Code §2699(f); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Inc., (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.”).

DEFENDANTS did not properly authorize and provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times if not always unable to take compliant rest periods due to their need to complete assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS’ premises.

For example, based on information and belief, at times, if not always, PLAINTIFF was unable to take compliant rest periods due to PLAINTIFF’s need to complete assigned job duties and/or was unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS’ premises.

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES’ rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

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

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS’ control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, DEFENDANTS failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. DEFENDANTS either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

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

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

DEFENDANTS did not provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

⁴ See Lab. Code §2699(f) and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

DEFENDANTS' failure to provide suitable resting facilities to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

Minimum Wage Violations: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit." Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, "Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period..." The applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

DEFENDANTS failed to compensate PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of DEFENDANTS' automatic deduction and time rounding policies for shift start and shift end times and meal period start and end times, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, DEFENDANTS implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to DEFENDANTS' control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

For example, based on information and belief, DEFENDANTS rounded PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES' total hours worked to at least the nearest quarter, half and/or whole hour, resulting in DEFENDANTS' failure to compensate PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, DEFENDANTS' wage statement(s) issued to PLAINTIFF for including but not limited to the following pay periods demonstrate DEFENDANTS rounded PLAINTIFF's total hours worked to at least the nearest quarter, half and/or whole hour, resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF: pay period beginning on 6/24/24 and ending on 6/30/24 showing precisely 40.00 regular hours worked and precisely 10.50 overtime hours worked. Based on information and belief, DEFENDANTS rounded PLAINTIFF's total hours worked to at least the nearest quarter, half and/or whole hour during most if not all pay periods during PLAINTIFF's employment, resulting in DEFENDANTS' consistent failure to compensate PLAINTIFF for all hours worked and the underpayment of minimum wages and overtime wages owed to PLAINTIFF.

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

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

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

Based on information and belief, DEFENDANTS did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all time spent donning and doffing personal protective equipment, safety equipment and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses, hats/bump caps/safety helmets and/or face masks) during meal periods, before the start of a scheduled shift, and after completing a scheduled shift, resulting in DEFENDANTS' failure to pay

NON-EXEMPT AGGRIEVED EMPLOYEES for all work time and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals and expectations.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-related phone calls and/or messages they received to their phones and/or mobile devices and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by DEFENDANTS. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable work time. DEFENDANTS' failure to pay for all time worked by virtue of their time-rounding practices resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

For example, as explained herein, wage statement(s) issued by DEFENDANTS to PLAINTIFF show DEFENDANTS rounded PLAINTIFF's total hours worked to at least the nearest quarter, half and/or whole hour during some and/or all pay periods during PLAINTIFF's employment, resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of minimum wages and overtime wages owed to PLAINTIFF.

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

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, DEFENDANTS violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, DEFENDANTS' automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to DEFENDANTS' premises and/or subject to DEFENDANTS' control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

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

Based on information and belief, DEFENDANTS failed and continue to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

(12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary piece-rate compensation, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES earned non-discretionary bonus/incentive pay compensation, shift differential pay, non-discretionary bonuses/incentive pay and/or other non-discretionary compensation during pay periods in which they worked overtime, yet DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate(s) used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Additionally, DEFENDANTS also violated California's overtime laws as to those NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an Alternative Workweek Schedule (AWS). Based on information and belief, DEFENDANTS adopted an Alternative Workweek Schedule (AWS) during the relevant period that was an unlawful AWS as it was not properly elected and/or implemented in accordance with the requirements of California law and/or DEFENDANTS failed to comply with the AWS, and as such, DEFENDANTS violated California's overtime laws, including but not limited to, Labor Code sections 510, 511, the applicable Wage Order, and Labor Code section 1198. Based on information and belief, DEFENDANTS failed to properly adopt an AWS in accordance with Labor Code section 511 and 1199, and the applicable Wage Order:

(C) Election Procedures Election procedures for the adoption and repeal of alternative workweek schedules require the following: (1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of workdays and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another. (2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection, "affected employees in the work unit" may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection is met. (3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have

made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non- English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void. (4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election. (5) Any type of alternative workweek schedule that is authorized by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer, except that the election shall be held not less than 12 months after the date that the same group of employees voted in an election held to adopt or repeal an alternative workweek schedule. The election shall take place during regular working hours at the employees' work site. If the alternative workweek schedule is revoked, the employer shall comply within 60 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may grant an extension of time for compliance. (6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Office of Policy, Research and Legislation within 30 days after the results are final, and the report of election results shall be a public document. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer. (7) Employees affected by a change in the work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new work hours for at least 30 days after the announcement of the final results of the election. (8) Employers shall not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek.

No employees shall be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. However, nothing in this section shall prohibit an employer from expressing his/her position concerning that alternative workweek to the affected employees. A violation of this paragraph shall be subject to Labor Code § 98 et seq.

On information and belief, PLAINTIFF alleges that DEFENDANTS failed to comply with the above procedures, and thus, failed to properly institute an alternative workweek for the purpose of obtaining a lawful exemption from overtime premiums for its mandated alternative workweek schedule. Based on information and belief, DEFENDANTS also failed to report the results to the Office of Policy, Research, and Legislation, or the DLSE, within thirty after the purported election results, and thus, violated Labor Code §§ 511, 1199, and the Applicable Wage Orders. This conduct results in violations of Labor Code §§ 510, 511, and 1198- 1199, and the Applicable Wage

Orders. These violations subject employer to civil penalties under Labor Code §§ 558 and 2699, and All Applicable Wage Orders. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated. Moreover, to the extent there was an AWS that was properly adopted, DEFENDANTS violated California's overtime laws as to NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an Alternative Workweek Schedule (AWS) but were required to work shifts shorter than the agreed upon AWS. Under the relevant Wage Order, "If an employer... requires an [AWS] employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours... for the day the employee is required to work the reduced hours." See Section 3 of all applicable Wage Orders. Based on information and belief, at times during NON-EXEMPT AGGRIEVED EMPLOYEES' respective employments by DEFENDANTS, NON-EXEMPT AGGRIEVED EMPLOYEES worked subject to an alternative work week schedule. Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an AWS, were sent home early and/or worked less hours than those that were scheduled under the AWS. On such shortened shifts, NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to overtime pay at 1.5 times the regular rate of pay after the first eight hours of work. Instead, DEFENDANTS paid NON-EXEMPT AGGRIEVED EMPLOYEES their base rate for all hours worked on the shortened shift(s) in violation of the alternative workweek schedule, and in violation of California Labor Code section 510, the applicable Wage Order, and Labor Code section 1198. As such, NON-EXEMPT AGGRIEVED EMPLOYEES that were subject to an AWS were also deprived of all owed overtime wages when required to work shortened shifts.

This conduct results in violations of Labor Code sections 218.5, 510, 511, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick leave to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES. DEFENDANTS either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to

⁶ See Lab. Code §2699(f); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, DEFENDANTS further failed to provide notice of the correct sick leave amount balance available to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statements.

Based on information and belief, DEFENDANTS failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, DEFENDANTS failed to provide notice of sick leave amount balance left for PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and PLAINTIFF seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, DEFENDANTS further failed and continue to fail to comply with Labor Code section 246, by failing to provide PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

DEFENDANTS unlawfully retained and continue to retain paid sick leave that should have been paid but was not, as a result of DEFENDANTS' failure to properly institute a paid sick leave program.

On information and belief, PLAINTIFF alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

PLAINTIFF requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to

DEFENDANTS' sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. PLAINTIFF requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

DEFENDANTS violated and continue to violate Labor Code section 216 by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

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

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

⁷ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty 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).

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

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

Separately, and independent of the above allegations, based on information and belief, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES that failed to list the total hours worked, in violation of including but not limited to, Labor Code section 226 (a)(2).

Based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid. For example, based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE is being paid in violation of including but not limited to, Labor Code section 226(a)(2) and/or Labor Code section 226(a)(6). For example, based on information and belief, at times, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES containing payment for hours worked during previous pay periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate pay period for that pay, further failing to list the total hours worked for the pay period, including but not limited to, the total hours worked for the pay period the retroactive pay corresponds with.

Based on information and belief, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES that fail to accurately list all deductions, in violation of Labor Code section 226(a)(4).

DEFENDANTS' failure to accurately list all hours worked on all wage statements caused confusion to PLAINTIFF and caused and continue to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by DEFENDANTS' failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, DEFENDANTS also failed to incorporate all forms of non-discretionary

compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, wage statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9) due to DEFENDANTS' failure to list an overtime rate category at all and/or failure to list a category containing the proper overtime rate.

For example, based on information and belief, DEFENDANTS issued wage statements to PLAINTIFF that do not provide an accurate overtime rate because instead of multiplying the regular rate of pay by one and one-half, the wage statements either fail to provide an accurate overtime rate of pay that incorporates all non-discretionary remuneration and/or the wage statements provide at least two (2) separate overtime rate categories with each/all providing corresponding rates that are either the same as the base and/or list a rate that is half the base rate of pay and/or otherwise fail to list the accurate overtime rate of pay. As such, DEFENDANTS do not list an accurate overtime rate anywhere on wage statements issued to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, Labor Code section 226(a)(9).

Moreover, based on information and belief, DEFENDANTS issued wage statements to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject DEFENDANTS to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

Unlawful Deductions: Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee.” Based on information and belief DEFENDANTS made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES paychecks during the relevant period including without limitation, deducting business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property and/or unlawfully deducting transaction fees/pay/money card fees and/or deducting costs advanced by DEFENDANTS. Such a practice is in violation of

⁸ See Lab. Code §226.3 (establishing that the civil penalty is “per employee per violation”).

including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. DEFENDANTS violated this section by, including but not limited to, failing to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject DEFENDANTS to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute’s provisions were violated.

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

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

NON-EXEMPT AGGRIEVED EMPLOYEES were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order. For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES reported to work for a scheduled shift but were sent home and/or were not put to work and were not paid all owed reporting time pay wages in accordance with California law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS’ failure to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 5(A)-(B) and the California Labor Code, including but not limited to section 1198.

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

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

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

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

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

Based on information and belief, DEFENDANTS failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

DEFENDANTS' NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Therefore, DEFENDANTS' violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses, and other violations described herein result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, DEFENDANTS paid PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off: California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, DEFENDANTS had and continue to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials) to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's

daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, DEFENDANTS failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, DEFENDANTS untimely provide final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials).

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

These violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

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

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES who are terminated with their final paychecks at the place of discharge and/or of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES

with their final paychecks at the office or agency of DEFENDANTS in the county where the work was performed, in violation of Labor Code Section 208.

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

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145

California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

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

Based on information and belief, PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses including but not limited to, work-related hand tools/equipment, uniforms/work clothing/work shoes/personal protective/safety gear and the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES’ personal vehicles and/or personal cell phones/mobile devices, internet and/or data usage for work-related purposes, including but not limited to, to receive and respond to work-related messages and/or phone calls.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to receive and respond to work-related calls and/or messages from supervisors and/or other employees regarding scheduling

and/or other work tasks but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

For example, DEFENDANTS required PLAINTIFF to use his personal cell phone/mobile device/internet usage to carry out PLAINTIFF's assigned job duties, including but not limited to, to receive and respond to work-related calls and/or messages from supervisors and/or other employees regarding scheduling and/or other work tasks, but PLAINTIFF was not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform their assigned job duties and/or for the costs of purchasing and/or maintaining work uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

As explained above, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone(s)/mobile device(s) for work-related purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear/hand tools/equipment.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

As a pattern and practice, DEFENDANTS regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

As described herein, DEFENDANTS regularly failed to reimburse and indemnify PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. DEFENDANTS' failure to provide PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Violation of Labor Code Sections 2100-2112:

Pursuant to Labor Code Sections 2100-2112, employers with one hundred (100) or more employees at a single warehouse distribution center, or one thousand (1,000) or more employees at one or more warehouse distribution centers in California are required to provide nonexempt employees, upon hire, with a written description of each quota they are subject to (e.g., quantified

number of tasks to be performed or materials to be handled) within a defined period of time and any potential adverse employment action that may result from failure to meet the quota. Labor Code Section 2102 (see below) prohibits adverse employment actions against employees who fail to meet their quota if the quota was not properly disclosed to the employee and prohibits quotas that prevent an employee from taking his or her meal or rest breaks, use of restrooms, or that interfere with compliance with California's occupational health and safety laws.

Labor Code Section 2101 provides:

Each employer shall provide to each employee, upon hire, or within 30 days of the effective date of this part, a written description of each quota to which the employee is subject, including the quantified number of tasks to be performed or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota.

Labor Code Section 2102 provides:

An employee shall not be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards. An employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods, or occupational health and safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been disclosed to the employee pursuant to Section 2101.

Labor Code Section 2104 provides in pertinent part:

(a)(1) If a current or former employee believes that meeting a quota caused a violation of their right to a meal or rest period or required them to violate any occupational health and safety laws in the Labor Code or division standards, they have the right to request, and the employer shall provide, a written description of each quota to which the employee is subject and a copy of the most recent 90 days of the employee's own personal work speed data.

(2) If a former employee requests a written description of the quotas to which they were subject and a copy of their own personal work speed data pursuant to paragraph (1), the employer shall provide 90 days of the former employee's quotas and personal work speed data for the 90 days prior to the date of the employee's separation from the employer.

(b) An employer that receives a written or oral request for information pursuant to subdivision (a) shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.

Based on information and belief, during the relevant period, DEFENDANTS employed 100 or more NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at a single warehouse distribution center and/or employed 1,000 or more NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at one or more distribution centers in California rendering DEFENDANTS subject to the provisions of Labor Code Sections 2100-2112, during the relevant period.

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

Based on further information and belief, DEFENDANTS have/had a policy and practice of subjecting NON-EXEMPT AGGRIEVED EMPLOYEES to adverse employment actions for failure to meet a quota that was not disclosed pursuant to Labor Code Section 2101 and/or did not allow them to comply with meal and rest period laws and/or occupational health and safety laws, in violation of Labor Code section 2102.

Based on information and belief, DEFENDANTS failed and continue to fail to timely produce upon written and/or oral request by current and/or former NON-EXEMPT AGGRIEVED EMPLOYEES of the belief that meeting a quota caused a violation of their right to a meal or rest period and/or required them to violate any occupational health and safety laws, a written description of each quota to which the employee is subject and/or a copy of the most recent 90 days of the NON-EXEMPT AGGRIEVED EMPLOYEE's own personal work speed data.

As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor Code section 2100-2112 as to NON-EXEMPT AGGRIEVED EMPLOYEES and are subject to civil penalties.

Unlawful Agreements and/or Unlawful Waivers:

Unlawful Agreements

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

Labor Code section 432.6(a), provides that "a person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right..."Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to sign meal period waivers that were universally signed as a condition of employment, including but not limited to, during the onboarding process. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES to sign unlawful meal period waivers as a condition of obtaining and/or maintaining employment,

DEFENDANTS violated Labor Code section 432.5. Further, these invalid waivers are otherwise unlawful under Labor Code section 432.6.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful provisions as a condition of employment, DEFENDANTS violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, DEFENDANTS asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on their employment application, in violation of California law.

Upon information and belief, DEFENDANTS, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on their employment application in violation of California law.

By asking about arrests not resulting in convictions, DEFENDANTS violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Unlawful PAGA Waiver

Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

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

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

Upon information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

As such, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

DEFENDANTS have violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, PLAINTIFF will seek these penalties in a civil action, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of DEFENDANTS within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco, Esq.
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 866.276.7637

Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink, reading "Kiara Bramasco". The signature is written in a cursive, flowing style.

Kiara Bramasco, Esq.
CROSNER LEGAL, PC

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EXHIBIT 2
PAGA Notice – Prince Ray

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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October 7, 2024

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Henkels & McCoy West, LLC
800 S. Douglas Road
Suite 1200
Coral Gables, FL 33134

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **PRINCE RAY** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

HENKELS & MCCOY WEST, LLC

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Gas Tech 2 from about November 2019 to Present. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates

that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

Defendants maintained inaccurate timekeeping policies and practices which resulted in time rounding and time shaving. Specifically, Plaintiff and the aggrieved employees did not clock in and out or otherwise report their time each day. Instead, a supervisor or foreman tracked time for each aggrieved employee. This resulted in not maintaining time records unique to each person, and alternatively keeping perfectly rounded time records for each aggrieved employee.

Plaintiff’s wage statements reveal perfectly rounded hours, in intervals of 8 hours per day. These hours are incorrect each time Plaintiff and the aggrieved employees worked outside of 8 hours per day. For example, Plaintiff and other aggrieved employees were required to attend daily 1 hour morning meetings outside of their 8-hour work day, however were never compensated for this time.

An illustrative example of this violation is shown on Plaintiff’s wage statements below:

PRINCE ALEXANDER RAY		Henkels & McCoy West, LLC. 2840 Ficus St Pomona CA 91766 FEIN 92-0395561 215-283-7600	
Pay Date	09/13/2024	Earnings Totals	Current YTD
Advice #	13571531	Gross Pay	\$1,475.52 \$47,437.94
		Net Pay	\$1,120.13 \$36,132.34
Pay Period		Deduction Totals	Sp Tx Rt Current YTD
Start	09/02/2024	Taxes	Yes \$351.00 \$11,151.95
Pay Period		Other Deductions	\$4.39 \$153.65
End	09/08/2024	Earnings Detail	Hours Current YTD
		REG-DIRECT	32.00 \$1,475.52 \$36,957.70
		OT-DIRECT	0.00 \$0.00 \$7,811.76
		TRAINING-IND	0.00 \$0.00 \$2,668.48
		SUP DUES \$H	0.00 \$70.40 \$2,241.80
		VACATION \$H	0.00 \$96.00 \$3,057.00

Excerpt from Plaintiff’s Wage Statement Received on 09/13/2024

PRINCE ALEXANDER RAY		Henkels & McCoy West, LLC. 2840 Ficus St Pomona CA 91766 FEIN 92-0395561 215-283-7600	
Pay Date	03/01/2024	Earnings Totals	Current YTD
Advice #	12570342	Gross Pay	\$688.64 \$8,608.00
		Net Pay	\$578.89 \$6,791.52
Pay Period			
Start	02/19/2024	Deduction Totals	Sp Tx Rt Current YTD
		Taxes	Yes \$105.36 \$1,776.97
Pay Period		Other Deductions	\$4.39 \$39.51
End	02/25/2024		
		Earnings Detail	Hours Current YTD
		REG-DIRECT	16.00 \$688.64 \$8,263.68
		TRAINING-IND	0.00 \$0.00 \$344.32
		SUP DUES \$H	0.00 \$35.20 \$440.00
		VACATION \$H	0.00 \$48.00 \$600.00

Excerpt from Plaintiff's Wage Statement Received on 03/01/2024

Plaintiff's wage statements above and those throughout his employment consistently show perfectly rounded hours. To the extent Plaintiff and the aggrieved employees worked hours that were unreported or removed, this resulted in unpaid minimum wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;" and "any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;" and "any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the "Hours and Days of Work" sections.

To the extent that Defendant's timekeeping, time rounding, and time shaving policies and practices resulted in unpaid hours worked over 8 hours in a day or 40 hours in a week this resulted in unpaid overtime.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Due to Defendant’s unlawful time rounding and time shaving policies and practices, Defendants failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. Therefore, Plaintiff and the aggrieved employees were underpaid sick pay whenever Defendants rounded or removed hours worked.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Plaintiff and other aggrieved employees frequently experienced missed, late, short, and interrupted meal periods due to the high demands of the job.

For example, Defendants Plaintiff and the aggrieved employees were forced to miss their meal periods due to pressure from the Defendants to finish the job quickly in order to avoid additional expenses that resulted from time sensitive projects, for example paving.

Additionally, Plaintiff and the aggrieved employees additionally experienced late and short meal periods due to finish projects before taking a meal period and the pressure to get back to work.

Despite these circumstances, Defendants maintained a policy and practice of failing to pay meal period premiums owed to Plaintiff and other aggrieved employees. Plaintiff's wage statements confirm Defendants failed to pay a single meal period premium.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Because of issues such as the high demands of the job, which also prevented Plaintiff and other aggrieved employees from taking compliant meal periods, Defendants had a policy and practice of denying these employees their entitled rest periods. Despite these conditions, Defendants also refused to pay rest period premiums owed to Plaintiff and other aggrieved employees, violating labor laws designed to protect workers. Throughout his employment, Plaintiff did not regularly receive a compliant rest period, and Defendants, as a matter of common policy and practice, systematically failed to pay the required rest period premiums.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, Defendants failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each payday.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Defendant violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked due to Defendant’s policy and practice of time shaving and time rounding.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unreimbursed Employee Expenses **Violation of Labor Code §§ 2802, 2804**

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and

this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

For example, Plaintiff and other aggrieved employees used their personal cell phones throughout the day to communicate amongst themselves and Defendants for work purposes. For instance, Plaintiff and the aggrieved employees used his phone to communicate with Defendants regarding traffic signage surrounding active construction sites. Plaintiff and other aggrieved employees were never reimbursed for the expenses associated with cell phone usage.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Maintain Accurate Records **Violation of Labor Code § 1174; IWC Wage Orders**

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

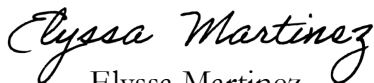
If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,


Elyssa Martinez

Cc Plaintiff Prince Ray

Counsel for Defendants: Virginia.Pagliery@mastec.com

Defendants' Human Resource Department: mreitmayer@henkelswest.com