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on behalf of the State of California and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ISMAEL CRUZ, on behalf of the State of
California and all Aggrieved Employees,

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**

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

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Superior Court of California,
County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By E. Galicia, Deputy Clerk

1 Plaintiff, ISMAEL CRUZ, (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants
3 HENKELS & MCCOY WEST, LLC, a Florida Limited Liability Company; HENKELS &
4 MCCOY, INC., a Pennsylvania Corporation; and DOES 1-100, inclusive (collectively referred to
5 herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

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

11 **JURISDICTION AND VENUE**

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

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

21 **THE PARTIES**

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

24 5. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
25 title(s) of maintenance worker and/or a similar title(s) and/or job position(s): from in or around
26 August 2013 through in or around July 2024.

27 6. 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 7. Defendant HENKELS & MCCOY, INC. is a Pennsylvania Corporation that, at all
3 relevant times, was authorized to do business within the State of California and is doing business in
4 the State of California.

5 8. 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 9. The true names and capacities of the DOE Defendants sued herein as DOES 1
12 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues 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. PLAINTIFF will seek leave of Court to amend this
15 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
16 become known.

17 10. PLAINTIFF is further informed and believes 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. PLAINTIFF is further informed and believes and thereon alleges 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.

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28 **JOINT LIABILITY**

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

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

25 13. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
26 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
27 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
28 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same

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

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

17 15. 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 PLAINTIFF's employer. Moreover, documents contained in
23 DEFENDANTS' personnel file for PLAINTIFF, including without limitation, employment-related
24 policies/agreements, DEFENDANTS' pay registry for PLAINTIFF and/or other employment-
25 related documents identify "Henkels & McCoy" and/or "Henkels & McCoy, Inc." as the name of
26 PLAINTIFF's employer.

27 16. Upon information and belief, PLAINTIFF alleges 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 PLAINTIFF and the Aggrieved
3 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
4 PLAINTIFF and the Aggrieved Employees in a uniform manner. DEFENDANTS collectively
5 represented to PLAINTIFF and the Aggrieved Employees that each was an "at-will" employee of
6 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
7 and Aggrieved Employees' employment with or without cause. Upon information and belief,
8 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
9 writing the details of their compensation, and the manner in which they were to take meal and rest
10 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
11 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
12 collectively would evaluate the wage rates of PLAINTIFF and Aggrieved Employees.

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

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

21 **PAGA ALLEGATIONS**

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

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

1 the present (“PAGA Period”).

2 20. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
3 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
4 limitations period and suffered all of the Labor Code violations set forth herein. Accordingly,
5 PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved Employees, the
6 civil penalties provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFF has
7 standing to bring a PAGA cause of action on behalf of the State and all Aggrieved Employees, as
8 PLAINTIFF was jointly employed by DEFENDANTS and is affected by all of the alleged
9 violations.

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

11 21. PLAINTIFF, on August 30, 2024, through counsel, gave written notice by online
12 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
13 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
14 in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via
15 certified mail.

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

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

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

27 **FACTUAL ALLEGATIONS**

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

9 26. For example, DEFENDANTS compensated PLAINTIFF with non-discretionary
10 bonus/incentive pay and/or other non-discretionary compensation.

11 27. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
12 hourly basis for time counted by DEFENDANTS as hours worked.

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

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

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

1 31. For example, based on information and belief, DEFENDANTS rounded
2 PLAINTIFF's and other Aggrieved Employees' total hours worked to at least the nearest quarter,
3 half and/or whole hour, resulting in DEFENDANTS' failure to compensate PLAINTIFF and other
4 Aggrieved Employees for all hours worked and the underpayment of wages owed to PLAINTIFF
5 and other Aggrieved Employees.

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

22 33. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
23 required to complete pre-shift and post-shift off-the-clock work due in part to DEFENDANTS'
24 failure to record the true shift start times and shift end times. For example, DEFENDANTS' time
25 records for PLAINTIFF for 2024 consistently show a total daily hours worked of eight (8) with the
26 same precise shift start time(s) usually of 6:00 a.m. or 5:00 a.m. and always rounded to the nearest
27 hour and/or half hour and typically showing the same precise shift end time of 3:00 or 3:30 p.m.,
28 again always rounded to the nearest hour and/or half hour. Based on information and belief,

1 DEFENDANTS instructed PLAINTIFF and other Aggrieved Employees to record their scheduled
2 shift start time and end times regardless of when PLAINTIFF and other Aggrieved Employees
3 actually started and stopped working on those days, which resulted in significant off-the-clock work
4 and the underpayment of wages owed to PLAINTIFF and other Aggrieved Employees.

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

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

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

25 37. Based on information and belief, DEFENDANTS did not compensate Aggrieved
26 Employees for all time spent donning and doffing personal protective equipment, safety equipment
27 and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses, hats/bump caps/safety helmets,
28 fire retardant/protective gear and/or face masks) during meal periods, before the start of a scheduled

1 shift, and after completing a scheduled shift, resulting in DEFENDANTS' failure to pay Aggrieved
2 Employees for all work time and the underpayment of minimum wages and overtime wages owed
3 to Aggrieved Employees.

4 38. Based on information and belief, Aggrieved Employees were also pressured to
5 complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals
6 and expectations.

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

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

18 41. Based on information and belief, DEFENDANTS implemented a time-rounding
19 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
20 compensable time because the time-rounding system implemented by DEFENDANTS would
21 almost always, if not always, result in understating actual compensable work time.

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

28 43. Based on information and belief, DEFENDANTS had actual and/or constructive

1 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
2 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
3 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation
4 of California's minimum and overtime wage laws.

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

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

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

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

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

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

1 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours
2 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in
3 a work week, in violation of California's overtime laws.

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

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

17 52. Additionally, DEFENDANTS also violated California's overtime laws as to those
18 Aggrieved Employees that were subject to an Alternative Workweek Schedule (AWS).

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

26 54. (C) Election Procedures Election procedures for the adoption and repeal of
27 alternative workweek schedules require the following: (1) Each proposal for an alternative
28 workweek schedule shall be in the form of a written agreement proposed by the employer. The

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

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

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

24 56. On information and belief, PLAINTIFF alleges that DEFENDANTS failed to
25 comply with the above procedures, and thus, failed to properly institute an alternative workweek for
26 the purpose of obtaining a lawful exemption from overtime premiums for its mandated alternative
27 workweek schedule.

28 57. Based on information and belief, DEFENDANTS also failed to report the results to

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

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

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

24 60. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
25 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
26 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
27 (30) minute first and second meal periods.

28 61. Based on information and belief, Aggrieved Employees were consistently unable to

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

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

10 63. For example, at times, PLAINTIFF was forced to take shortened, interrupted and or
11 late meal periods (i.e. after working more than five (5) hours) due to the need to complete assigned
12 job duties.

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

20 65. PLAINTIFF was consistently required to take late, shortened and/or interrupted meal
21 periods due to including but not limited to, the need to complete assigned job duties.

22 66. For example, DEFENDANTS' time records for PLAINTIFF reflect a purported meal
23 period of precisely sixty-minutes always purportedly taken on the whole and/or half hour and
24 frequently taken *after* the fifth hour of work. By way of example, PLAINTIFF took his meal period
25 *after* the fifth hour of work on including but not limited to the following dates: January 16, 2024,
26 January 17, 2024, January 18, 2024, January 19, 2024, January 22, 2024, January 23, 2024, January
27 24, 2024, January 25, 2024, January 26, 2024, January 29, 2024, January 30, 2024, January 31,
28 2024, February 1, 2024, February 5, 2024, February 6, 2024, February 7, 2024, February 8, 2024,

1 and February 9, 2024.

2 67. Notably, DEFENDANTS' wage statements/pay records for PLAINTIFF do not show
3 the payment of any meal period premiums paid to PLAINTIFF for the pay periods inclusive of the
4 above-described dates on which PLAINTIFF was required to take late, shortened, interrupted and/or
5 otherwise noncompliant meal periods, in violation of California meal period law.

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

11 69. Based on information and belief, DEFENDANTS implemented policies and/or
12 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
13 during unpaid meal periods.

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

18 71. Based on information and belief, despite DEFENDANTS' failure to provide lawful
19 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
20 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
21 deducting at least thirty/sixty minutes per shift for missed and/or otherwise unlawful meal periods
22 despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
23 Employees did not receive lawful meal periods.

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

27 73. For example, when PLAINTIFF worked more than ten (10) and/or twelve (12} hours
28 in a shift, PLAINTIFF was typically, if not always, denied any version of a second meal period.

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

4 75. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
5 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
6 information and belief, DEFENDANTS did not have a written meal period policy, nor did
7 DEFENDANTS have any sort of compliant policy in practice.

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

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

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

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

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

5 81. Based on information and belief, DEFENDANTS did not have a have a compliant
6 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
7 practice.

8 82. For example, based on information and belief, Aggrieved Employees were at times
9 if not always unable to take compliant rest periods due to their need to complete assigned job duties
10 and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported
11 rest periods restricted to DEFENDANTS' premises.

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

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

18 85. For example, based on information and belief, DEFENDANTS failed to authorize
19 and permit rest periods that were a "net" ten minutes in a suitable rest area, and instead, to the extent
20 rest periods were provided, DEFENDANTS limited PLAINTIFF and other Aggrieved Employees
21 to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes
22 of leaving their work stations , in violation of California rest period law.

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

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

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

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

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

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

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

1 226(a).

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

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

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

13 96. For example, as explained herein, DEFENDANTS regularly failed to reimburse
14 PLAINTIFF for business expenses, incurred by PLAINTIFF each pay period, thereby deducting
15 business costs from PLAINTIFF's earned wages each pay period, in violation of including but not
16 limited to, Labor Code Section 221, and further failing to itemize these deductions for business
17 costs, on PLAINTIFF's wage statements, in violation of Labor Code Section 226(a)(4).

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

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

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

1 entity that is the employer.

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

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

11 102. Based on information and belief, DEFENDANTS shifted the costs of doing business
12 onto PLAINTIFF and other Aggrieved Employees requiring them to pay for business expenses,
13 including but not limited to, work-related hand tools/equipment, uniforms/work clothing/work
14 shoes/personal protective/safety gear, the use of Aggrieved Employees' personal vehicles, and/or
15 the use of Aggrieved Employees' personal cell phones/mobile devices, internet and/or data usage
16 for work-related purposes, including but not limited to, to receive and respond to work-related
17 messages and/or phone calls.

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

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

27 105. Based on information and belief, Aggrieved Employees were not reimbursed for the
28 cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform

1 their assigned job duties and/or for the costs of purchasing and/or maintaining work
2 uniforms/clothing/shoes and/or protective gear.

3 106. As explained above, based on information and belief, Aggrieved Employees were
4 not reimbursed for the cost of using their personal phone(s)/mobile device(s) for work-related
5 purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work
6 shoes, personal protective/safety gear/hand tools/equipment.

7 107. Based on information and belief, DEFENDANTS regularly failed to reimburse and
8 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
9 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
10 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
11 assigned by DEFENDANTS.

12 108. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
13 for all reasonable expenses associated with carrying out their duties required that Aggrieved
14 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
15 2802.

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

21 110. Upon separation of employment, Aggrieved Employees' final paychecks were not
22 timely provided, and/or were not timely provided with all owed vacation pay/ and/or paid time off
23 and/or did not include all wages owed.

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

1 time off paid at the final rate including non-discretionary compensation, including but not limited
2 to, all owed shift differentials).

3 112. Based on further information and belief, DEFENDANTS failed to timely provide all
4 owed wages immediately upon discharge of employment. Based on information and belief, at times,
5 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
6 Aggrieved Employees would not be called in for work for longer than a single pay period due to
7 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
8 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
9 the end of such periods of employment, in violation of including but not limited to Labor Code
10 section 201-202. As such, DEFENDANTS violated Labor Code sections 201 and/or 202, subjecting
11 DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256.

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

19 114. For example, as explained herein, DEFENDANTS failed to pay PLAINTIFF all
20 owed paid time off and/or failed to pay PLAINTIFF all paid time off at the properly accrued rate(s).

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

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

1 Labor Code Section 208.

2 117. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
3 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
4 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
5 from Aggrieved Employees paychecks during the relevant period including without limitation,
6 deducting tips/gratuities and/or business costs from Aggrieved Employees’ earned wages.

7 118. For example, as explained herein, DEFENDANTS regularly failed to reimburse
8 PLAINTIFF for business expenses incurred by PLAINTIFF each pay period, thereby deducting
9 business costs from PLAINTIFF’s 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 PLAINTIFF’s wage statements, in violation of Labor Code section 226(a)(4).

12 119. Such a practice is in violation of including but not limited to, Labor Code Sections
13 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

17 121. All applicable IWC Wage Orders provide that all working employees shall be
18 provided with suitable seats when the nature of the work process reasonably permits the use of seats.

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

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

26 124. Moreover, based on information and belief, the nature of the work reasonably
27 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
28 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of

1 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
2 of seats would not interfere with the performance of their duties.

3 125. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
4 provides as follows:

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

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

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

24 129. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
25 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
26 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
27 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
28 required by law, including but not limited to the following records: total daily hours worked,

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

4 130. DEFENDANTS have failed and continue to fail to keep accurate and complete
5 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
6 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
7 employer control during unpaid meal periods, failure to record the true start and end times of meal
8 periods, shift start times and shift end times, and other off-the-clock work policies and practices
9 described herein.

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

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

27 133. Based on information and belief, throughout the relevant time period,
28 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and

1 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
2 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
3 prior to their respective separations, for as on several occasions thereafter, he or she would have
4 been entitled to use the banked sick leave and earn appropriate compensation.

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

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

14 136. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

15 Unlawful Agreements.

16
17 137. Labor Code section 432.5 provides that "no employer...shall require any employee
18 or applicant for employment to agree, in writing, to any term or condition which is known by such
19 employer...to be prohibited by law." Based on information and belief, DEFENDANTS required
20 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not
21 limited to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or
22 nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful
23 meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements
24 and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
25 employment in violation of Labor Code section 432.5.

26 138. Labor Code section 432.6(a), provides that "a person shall not, as a condition of
27 employment, continued employment, or the receipt of any employment-related benefit, require any
28 applicant for employment or any employee to waive any right..."Based on information and belief,

1 DEFENDANTS required Aggrieved Employees to sign meal period waivers that were universally
2 signed as a condition of employment, including but not limited to, during the onboarding process.
3 By requiring Aggrieved Employees to sign unlawful meal period waivers as a condition of obtaining
4 and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these
5 invalid waivers are otherwise unlawful under Labor Code section 432.6.

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

9
10 Unlawful Inquires into Criminal History

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

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

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

27 143. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
28 engaged in these same herein described unlawful practices, which led to violations of the California

1 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
2 unlawful practices to all of its employees that it applied to PLAINTIFF.

3 **FIRST CAUSE OF ACTION**
4 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
5 **2698, *ET SEQ.***
6 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
7 **Defendants)**

8 144. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

9 **Failure to Keep Accurate Records**

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

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

19 147. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
20 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
21 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
22 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
23 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
24 period during which the referenced statutes and Wage Order provisions were violated.¹

25 **Meal Period Violations**

26 148. California law requires employers to provide employees a duty-free, uninterrupted
27 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and
28 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and

¹ Labor Code § 2699(f)

1 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
2 *Court* (2012) 53 Cal.4th 1004.

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

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

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

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

27 153. Based on information and belief, DEFENDANTS had and continue to have a policy
28 of rounding the start and end times of employees’ meal periods and/or automatically deducting

1 thirty/sixty minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF
2 and Aggrieved Employees did not receive compliant meal periods.

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

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

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

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

19 **Rest Period Violations**

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

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

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

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

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

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

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

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

10 **Minimum and Overtime Wage Violations**

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

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

24 167. As explained above, DEFENDANTS violated California's minimum and overtime
25 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
26 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
27 start and end times and meal period start and end times), payment according to scheduled hours
28 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during

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

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

5 169. 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, payment according to scheduled hours, failure to relieve employees of all duties and
8 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
9 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
10 Employees.

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

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

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

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

1 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
2 other Aggrieved Employees.

3 174. Based on information and belief, at times, Aggrieved Employees that were subject
4 to an AWS, were sent home early and/or worked less hours than those that were scheduled under
5 the AWS. On such shortened shifts, Aggrieved Employees were entitled to overtime pay at 1.5 times
6 the regular rate of pay after the first eight hours of work. Instead, DEFENDANTS paid Aggrieved
7 Employees their base rate for all hours worked on the shortened shift(s) in violation of the alternative
8 workweek schedule, and in violation of California Labor Code section 510, the applicable Wage
9 Order, and Labor Code section 1198. As such, Aggrieved Employees that were subject to an AWS
10 were also deprived of all owed overtime wages when required to work shortened shifts.

11 175. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
12 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
13 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
14 Wage Orders, section 20.

15 **Statutory Wage Violations**

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

27 **Refusal to Make Payment**

28 177. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
37
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
2 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
3 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
4 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
5 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
6 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
7 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

8 **Reporting Time Pay Violations.**

9 178. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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

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

27 ² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 pay all reporting time wages to PLAINTIFF and Aggrieved Employees violated and continues to
2 violate the applicable Wage Order, and the California Labor Code, including but not limited to
3 section 1198.

4 **Seating Violations**

5 182. Per all applicable IWC Wage Orders, employees shall be provided with suitable seats
6 when the nature of the work reasonably permits the use of seats and when they are not actively
7 engaged in the work duties that would not permit them to be seated.

8 183. All applicable IWC Wage Orders provide that all working employees shall be
9 provided with suitable seats when the nature of the work process reasonably permits the use of seats.

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

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

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

22 **Standard Conditions of Labor Violations**

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

1 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
2 1197.1 and 2699.

3 **Business Expense Violations**

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

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

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

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

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

28 193. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved

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

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

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

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

14 **Wage Statement Violations**

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

24 198. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
25 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
26 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
27 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
28 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net

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

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

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

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

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

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

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

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

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

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

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

23 209. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
24 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
25 during which the statute provisions were violated. ³

26 **Unlawful Deductions**

27 210. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from

28 ³ Labor Code § 226.3 (establishing that the civil penalty is ~~4~~³ per employee per violation").

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

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

12 **Sick Leave Violations**

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

20 213. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
21 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
22 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
23 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
24 Aggrieved Employees’ intelligent exercise of their paid sick leave.

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

1 215. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
2 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
3 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
4 were entitled to the maximum number of hours accruable.

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

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

11 218. On information and belief, PLAINTIFF alleges that all of these practices were
12 experienced and continue to be experienced by other Aggrieved Employees.

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

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

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

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

28 **Untimely Payment of Final Wages**

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

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

14 224. Based on information and belief, upon separation of employment, Aggrieved
15 Employees’ final paychecks were not timely provided, and/or were not timely provided with all
16 owed vacation pay/ and/or paid time off and/or did not include all wages owed, in violation of Labor
17 Code section 201-202. Based on information and belief, PLAINTIFF’s and other Aggrieved
18 Employees’ final paychecks did not include all wages owed as they are devoid of, including but not
19 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay and/or all paid
20 time off wages at the properly accrued rates (including but not limited to any owed shift differential
21 pay).

22 225. Based on information and belief, at times, Aggrieved Employees experienced breaks
23 in employment caused by DEFENDANTS whereby Aggrieved Employees would not be called in
24 for work for longer than a single pay period due to including but not limited to DEFENDANTS’
25 lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet,
26 DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in
27 violation of including but not limited to Labor Code section 201-202.

28 226. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
46
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
2 256.

3 **Violation of Labor Code Section 208**

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

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

13 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

14 *Unlawful Agreements.*

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

24 230. Labor Code section 432.6(a), provides that “a person shall not, as a condition of
25 employment, continued employment, or the receipt of any employment-related benefit, require any
26 applicant for employment or any employee to waive any right...”Based on information and belief,
27 DEFENDANTS required Aggrieved Employees to sign meal period waivers that were universally
28 signed as a condition of employment, including but not limited to, during the onboarding process.

1 By requiring Aggrieved Employees to sign unlawful meal period waivers as a condition of obtaining
2 and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these
3 invalid waivers are otherwise unlawful under Labor Code section 432.6.

4 231. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
5 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
6 432.5.

7 Unlawful Inquires into Criminal History

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

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

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

22 Violation of Labor Code Section 432.6

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

27 236. Labor Code Section 432.6(a) provides: “[A] person shall not, as a condition of
28 employment, continued employment, or the receipt of any employment-related benefit, require any

1 applicant for employment or any employee to waive any right...”

2 237. Labor Code Section 432.6(b) provides in pertinent part:

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

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

12 240. Under the provisions of PAGA and the above mentioned Labor Code sections,
13 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
14 226.7, 227.3, 245-248.6, 256, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
15 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
16 interpretations of these laws by California Courts and administrative bodies, as well as any other
17 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

18 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
19 relevant California Labor Code provisions listed herein only if permitted by the PAGA statute,
20 pursuant to Labor Code section 2699(a); and

21 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
22 violations without a civil penalty recoverable under the PAGA, all in the default amounts provided
23 by Labor Code section 2699(f).

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

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PRAYER FOR RELIEF

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

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

Dated: November 5, 2024

CROSNER LEGAL, PC

By: 

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