

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

Attorneys for Plaintiff EULOGIO RUVALCABA
on behalf of the State of California and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

EULOGIO RUVALCABA, on behalf of the
State of California and all Aggrieved
Employees,

Plaintiff,

v.

OPSEC SPECIALIZED PROTECTION,
INC, a California Corporation; and DOES 1-
100, inclusive,

Defendants.

Case No.: **24STCV29407**

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

1 Plaintiff, EULOGIO RUVALCABA, (“PLAINTIFF”), on behalf of the State of California
2 and all Aggrieved Employees (as defined below), hereby files this Complaint against Defendants
3 OPSEC SPECIALIZED PROTECTION, INC, a California Corporation; and DOES 1-100,
4 inclusive (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
5 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, DEFENDANTS employed PLAINTIFF to work in this judicial district, and
17 conduct alleged by PLAINTIFF herein occurred in this judicial district. *See also Crestwood*
18 *Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is
19 proper in any county where the defendants committed Labor Code violations against some of its
20 employees). Venue is also proper pursuant to section 393 of the California Code of Civil Procedure
21 because the cause, or some part of the cause, arose in the County of Los Angeles.

22 **THE PARTIES**

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

25 5. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
26 title(s) of security guard and/or a similar title(s) and/or job position(s) from in or around October
27 2023 through in or around of the beginning of July 2024. DEFENDANTS assigned PLAINTIFF to
28 work at DEFENDANTS’ post(s) and/or facilities located in Long Beach, California.

6. Defendant OPSEC SPECIALIZED PROTECTION, INC is a California Corporation that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

7. DEFENDANTS own, operate, manage and/or staff its employees to work at the posts, offices, facilities and/or other location(s) in California, including, but not limited to, the posts, offices, facilities and/or other locations in including, but not limited to, Long Beach, California, and other cities throughout California. DEFENDANTS, through its various locations, serve the security services industry.

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

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

JOINT LIABILITY

10. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)

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

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

22 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
23 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
24 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
25 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
26 policies and practices regardless of the location(s) where they worked. Among other things,
27 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
28 in DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control

1 over the day-to-day operations and employment matters, including the power to hire and fire, set
2 schedules, issue employee policies, and determine rates of compensation across its locations in
3 California; (3) DEFENDANTS utilize the same policies and procedures for all California
4 employees, including issuing the same employee handbooks and other form agreements; (4)
5 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
6 employment matters; and, (6) DEFENDANTS share employees.

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

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

28 15. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
5
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

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

8 **PAGA ALLEGATIONS**

9 17. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
10 of the State of California and all Aggrieved Employees, regarding violations of the California Labor
11 Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include the
12 following:

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

17 18. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
18 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
19 limitations period and suffered all of the Labor Code violations set forth herein. Accordingly,
20 PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved Employees, the
21 civil penalties provided by PAGA, plus reasonable attorney's fees and costs. PLAINTIFF has
22 standing to bring a PAGA cause of action on behalf of the State and all Aggrieved Employees, as
23 PLAINTIFF was jointly employed by DEFENDANTS and is affected by all of the alleged
24 violations.

25 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

26 19. PLAINTIFF, on August 28, 2024, through counsel, gave written notice by online
27 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
28 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged

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

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

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

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

14 **FACTUAL ALLEGATIONS**

15 23. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
16 title(s) of security guard and/or a similar title(s) and/or job position(s) from in or around October
17 2023 through in or around of the beginning of July 2024. PLAINTIFF regularly worked at least
18 approximately six (6) to eleven (11) hours per day, at least five (5) to six (6) days per week.

19 24. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
20 DEFENDANTS as hours worked. Based on information and belief, Aggrieved Employees were
21 also compensated with non-discretionary compensation, including but not limited to, shift
22 differential pay, bonus/incentive pay and/or other non-discretionary compensation.

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

1 below.

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

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

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

17 29. For example, DEFENDANTS required PLAINTIFF to send and/or receive off-the-
18 clock work-related communications outside of PLAINTIFF's scheduled shift time(s), including but
19 not limited to, prior to clocking in for PLAINTIFF's shift(s), after clocking out for the end of
20 PLAINTIFF's shift(s), during unpaid meal periods and/or otherwise outside of PLAINTIFF's
21 scheduled shift times, however, DEFENDANTS did not compensate PLAINTIFF for any/all time
22 spent engaging in off-the-clock work-related communications, resulting in DEFENDANTS' failure
23 to compensate PLAINTIFF for all hours worked and the underpayment of wages owed to
24 PLAINTIFF.

25 30. Based on information and belief, at times, EMPLOYER's electronic time-keeping
26 system/app/call-in system malfunctioned such that Aggrieved Employees were required to either
27 reinitiate and/or otherwise troubleshoot the system/app and/or wait for the system prior to being able
28 to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from

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

6 31. Based on further information and belief, Aggrieved Employees were not paid for
7 additional pre-shift and/or post-shift off-the-clock work, work during unpaid meal periods and/or
8 other work outside their scheduled shift times, including but not limited to, all time spent traveling
9 between assigned job sites/work locations, all time spent bestowing personal items in and/or
10 retrieving personal items from employee lockers and/or storage areas, all time spent compiling,
11 retrieving, maintaining and/or returning work equipment/tools and/or all time spent donning and
12 doffing uniforms/work clothing/personal protective/safety gear (e.g., protective vests, hats, face
13 masks, gloves, work boots and/or other mandated work clothing/gear) during meal periods, before
14 the start of a scheduled shift, and after completing a scheduled shift resulting in the underpayment
15 of wages owed to Aggrieved Employees.

16 32. Moreover, based on information and belief, DEFENDANTS failed to pay
17 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split
18 shifts during the relevant period. For example, based on information and belief, at times,
19 DEFENDANTS required PLAINTIFF and/or other Aggrieved Employees to work two separate
20 shifts in the same day. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF
21 and/or other Aggrieved Employees split shift compensation whenever PLAINTIFF's and/or other
22 Aggrieved Employees' work schedules were interrupted by non-paid non-working periods
23 established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See
24 section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay
25 at the minimum wage shall be paid in addition to the minimum wage for that workday...). See, also,
26 Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the
27 minimum wage shall be paid in addition to the minimum wage for that workday, except when the
28 employee resides at the place of employment). DEFENDANTS also failed to separately itemize

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

8 33. Based on information and belief, DEFENDANTS failed to pay Aggrieved
9 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
10 Employee worked in California. For example, based on information and belief, DEFENDANTS
11 failed to pay Aggrieved Employees who performed at least two (2) hours of work within the city of
12 Los Angeles and/or within an unincorporated area of the county of Los Angeles, at the applicable
13 minimum wage rate(s) in effect for the city and/or county of Los Angeles, and as such failed to pay
14 all owed minimum wages. See Section 187.02(d) of the Los Angeles Municipal Code (increasing
15 the minimum wage rate, effective July 1, 2023, by \$.74 for a new minimum wage rate of \$16.78 per
16 hour) and Los Angeles County Minimum Wage Ordinance section 8.100.040 (increasing the
17 minimum wage rate for the unincorporated areas of Los Angeles to \$16.90 per hour).

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

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

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

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

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

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

14 39. Based on further information and belief, DEFENDANTS implemented a time-
15 rounding system that as applied systematically deprived PLAINTIFF and other Aggrieved
16 Employees of compensable time because the time-rounding system implemented by
17 DEFENDANTS would almost always, if not always, result in understating actual compensable work
18 time.

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

25 41. Based on information and belief, DEFENDANTS had actual and/or constructive
26 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
27 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
28 underpayment of minimum wages owed to PLAINTIFF and other Aggrieved Employees, in

1 violation of California's minimum and overtime wage laws.

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

5 43. 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 44. Based on information and belief, DEFENDANTS calculated the owed overtime
10 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
11 based on the minimum wage established for the cities and/or counties within which Aggrieved
12 Employees worked, resulting in the miscalculation and underpayment of overtime wages owed to
13 Aggrieved Employees who worked in cities and/or counties in California with minimum wage rates
14 above the California minimum wage rate.

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

21 46. For example, as described herein, based on information and belief, DEFENDANTS
22 compensated PLAINTIFF and other Aggrieved Employees with non-discretionary bonus/incentive
23 pay and/or other non-discretionary compensation during pay periods in which PLAINTIFF and
24 other Aggrieved Employees worked overtime, however, DEFENDANTS failed to incorporate all
25 non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
26 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
27 Aggrieved Employees.

28 47. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently

1 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
2 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
3 (30) minute first and second meal periods.

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

9 49. For example, based on information and belief, DEFENDANTS required Aggrieved
10 Employees to monitor work communication device(s)/work phone(s) and/or remain at their assigned
11 post(s)/tethered to their workstations during unpaid purportedly off-duty meal periods, resulting in
12 DEFENDANTS' failure to relieve PLAINTIFF of all duties and DEFENDANTS' control during
13 unpaid meal periods and therefore consistently denied meal periods and the underpayment of wages
14 owed to PLAINTIFF.

15 50. For example, DEFENDANTS required PLAINTIFF to remain on DEFENDANTS'
16 premises/at PLAINTIFF's assigned post as well as monitor a work phone/mobile device and respond
17 to work-related communications while clocked out for meal periods, resulting in consistently denied
18 meal periods as well as DEFENDANTS' failure to compensate PLAINTIFF for all hours worked
19 and the underpayment of wages owed to PLAINTIFF.

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

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

28 53. Based on information and belief, DEFENDANTS required Aggrieved Employees to

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

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

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

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

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

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

27 59. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
28 additional hour of wages at their respective regular rates of compensation for each workday a lawful

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

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

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

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

17 63. For example, based on information and belief, DEFENDANTS required Aggrieved
18 Employees to monitor work communication device(s)/work phone(s) and/or remain at their assigned
19 post(s)/tethered to their workstations during any rest periods, in violation of California rest period
20 law.

21 64. For example, DEFENDANTS required PLAINTIFF to remain on DEFENDANTS'
22 premises/at PLAINTIFF's assigned post during any rest periods.

23 65. As such, PLAINTIFF was rarely, if ever, relieved of all duties and DEFENDANTS'
24 control during any rest periods, resulting in consistently denied rest periods.

25 66. Based on information and belief, DEFENDANTS did not pay PLAINTIFF any rest
26 period premiums during PLAINTIFF's employment and/or did not pay PLAINTIFF a proper rest
27 period premium for each missed and/or otherwise legally non-compliant rest period.

28 67. Based on information and belief, DEFENDANTS did not have a lawful policy,

1 instruction, or practice as to the taking, timing, or duty-free nature of rest periods.

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

6 69. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
7 lasting longer than ten hours.

8 70. Based on information and belief, DEFENDANTS implemented policies and/or
9 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
10 DEFENDANTS' control during rest periods. For example, based on information and belief, at times
11 Aggrieved Employees were required to monitor and respond to work-related communication
12 devices, for example, radios and/or other work-related communication devices during rest periods
13 and thereby were not relieved of all duties and DEFENDANTS' control during rest periods.

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

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

24 73. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
25 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
26 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
27 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
28 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to

1 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
2 applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate by the employee.

4 74. DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees
5 that also failed to indicate the earned gross and net wages earned during the pay period, the correct
6 applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF and
7 Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
8 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
9 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
10 other off-the-clock work policies and practices) which results in a violation of Labor Code section
11 226(a).

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

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

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

23 78. Based on information and belief, DEFENDANTS issued wage statements to
24 Aggrieved Employees that fail to accurately list all deductions, in violation of Labor Code section
25 226(a)(4).

26 79. For example, as explained herein, DEFENDANTS regularly failed to reimburse
27 PLAINTIFF for business expenses, incurred by PLAINTIFF each pay period, thereby deducting
28 business costs from PLAINTIFF's earned wages each pay period, in violation of including but not

1 limited to, Labor Code Section 221, and further failing to itemize these deductions for business
2 costs, on PLAINTIFF's wage statements, in violation of Labor Code Section 226(a)(4).

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

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

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

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

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

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

1 respond to work related messages and/or phone calls.

2 86. For example, based on information and belief, Aggrieved Employees were required
3 to receive and respond to work-related calls and/or messages from including but not limited to
4 supervisors and/or other Aggrieved Employees regarding scheduling and/or other work tasks and/or
5 were required to download and use work-related applications on their personal cell phones/mobile
6 devices but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

7 87. For example, DEFENDANTS required PLAINTIFF to use PLAINTIFF's personal
8 cell phone/mobile device(s) to carry out PLAINTIFF's assigned job duties, including but not limited
9 to, for responding to work-related calls/messages, however, DEFENDANTS did not provide
10 PLAINTIFF with any and/or full reimbursement for these business expenses PLAINTIFF incurred
11 in connection with being required to use her personal cell phone/mobile device(s) for work,
12 including but not limited to, increased data plan charges.

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

17 89. Based on information and belief, DEFENDANTS regularly failed to reimburse and
18 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
19 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
20 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
21 assigned by DEFENDANTS.

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

26 91. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
27 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
28 were due and owing upon termination or resignation. Based on information and belief,

1 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
2 requirements of Labor Code sections 201-202.

3 92. Upon separation of employment, Aggrieved Employees' final paychecks were not
4 timely provided, and/or were not timely provided with all owed vacation pay/ and/or paid time off
5 and/or did not include all wages owed.

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

13 94. For example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck
14 for at least approximately one (1) week following PLAINTIFF's termination date, and
15 PLAINTIFF's late final paycheck was devoid of all wages owed including but not limited to, all
16 owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or
17 paid time off wages at the properly accrued rates (including but not limited to, all owed vacation
18 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
19 limited to, shift differentials).

20 95. Based on further information and belief, DEFENDANTS failed to timely provide all
21 owed wages immediately upon discharge of employment. Based on information and belief, at times,
22 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
23 Aggrieved Employees would not be called in for work for longer than a single pay period due to
24 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
25 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
26 the end of such periods of employment, in violation of including but not limited to Labor Code
27 section 201-202. As such, DEFENDANTS violated Labor Code sections 201 and/or 202, subjecting
28 DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256.

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

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

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

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

19 **100. Unlawful Deductions.** Labor Code section 221 prohibits an employer from
20 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
21 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
22 from Aggrieved Employees paychecks during the relevant period including, without limitation,
23 business costs from Aggrieved Employees’ earned wages.

24 101. For example, as explained herein, DEFENDANTS regularly failed to reimburse
25 PLAINTIFF for business expenses incurred by PLAINTIFF each pay period, thereby deducting
26 business costs from PLAINTIFF’s earned wages each pay period, in violation of including but not
27 limited to, Labor Code Section 221, and further failing to itemize these deductions for business
28 costs, on PLAINTIFF’s wage statements, in violation of Labor Code section 226(a)(4).

1 102. Such a practice is in violation of including but not limited to, Labor Code Sections
2 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

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

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

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

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

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

20 107. For example, DEFENDANTS failed to provide PLAINTIFF with suitable seating,
21 and when PLAINTIFF was not engaged in duties which required PLAINTIFF to stand, no seating
22 was placed in reasonable proximity to PLAINTIFF's workstation.

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

28 109. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 provides as follows:

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

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

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

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

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

7 115. **Failure to Produce Employment Records.** Based on information and belief,
8 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
9 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
10 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
11 counsel, sent a written request for payroll and personnel records to DEFENDANTS on or around
12 including but not limited to the following date(s): August 28, 2024. Yet, DEFENDANTS failed to
13 timely produce complete records within the time periods delineated by California labor law. Based
14 on information and belief, DEFENDANTS failed and continues to fail to timely produce complete
15 payroll and personnel records when requested by other Aggrieved Employees. Based on information
16 and belief, DEFENDANTS failed and continue to fail to timely produce complete time, pay, and
17 personnel records when requested by other Aggrieved Employees.

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

28 117. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
24
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

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

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

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

22 121. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

23 Unlawful Agreements.

24
25 122. Labor Code section 432.5 provides that "no employer...shall require any employee
26 or applicant for employment to agree, in writing, to any term or condition which is known by such
27 employer...to be prohibited by law." Based on information and belief, DEFENDANTS required
28 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not

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

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

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

17
18 Unlawful Inquires into Criminal History

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

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

28 127. **Violation of Labor Code Section 432.6.** Based on information and belief,
26
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

7 128. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
8 engaged in these same herein described unlawful practices, which led to violations of the California
9 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
10 unlawful practices to all of its employees that it applied to PLAINTIFF.

11 **FIRST CAUSE OF ACTION**
12 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
13 **2698, *ET SEQ.***

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

16 129. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

17 **Failure to Keep Accurate Records**

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

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

27 132. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
28 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and

1 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
2 period during which the referenced statutes and Wage Order provisions were violated.¹

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

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

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

19 135. Personnel Records. In addition to their right to time and pay records, employees, and
20 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
21 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
22 section 432 further specifies that employers must furnish copies of all employment records bearing
23 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
24 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days
25 from the date the employer receives a written request." An employer's failure to comply within this
26 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar

27
28 ¹ Labor Code § 2699(f)

1 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

2 136. Based on information and belief, DEFENDANTS fail to timely produce or make
3 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant
4 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
5 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

6 **Meal Period Violations**

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

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

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

23 140. Employers must pay employees an additional hour of wages at the employees'
24 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
25 meal period, first meal period provided after five (5) hours, second meal period provided after 10
26 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to
27 provide an employee a meal period in accordance with the applicable provision of this Order, the
28 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation

1 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

2 141. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
3 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
4 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
5 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
6 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
7 periods completely.

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

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

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

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

23 146. These unlawful meal period policies and practices result in violations of Labor Code
24 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
25 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
26 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
27 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

1 **Rest Period Violations**

2 147. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
3 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
4 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
5 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
6 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
7 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
8 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
9 1029). The rest period requirement obligates employers to permit and authorize employees to take
10 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
11 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
12 257. If the employer fails to provide any required rest period, the employer must pay the employee
13 one hour of pay at the employee’s regular rate of compensation for each workday the employer did
14 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
15 applicable IWC Wage Order, §12(B).

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

26 149. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
27 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
28 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject

1 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
2 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
3 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

17 153. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
18 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
19 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

20 **Minimum and Overtime Wage Violations**

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

28 155. California law also provides that employees in California must be paid overtime,
32
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

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

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

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

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

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

1 in a week.

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

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

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

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

25 **Statutory Wage Violations**

26 165. California Labor Code section 223 makes it unlawful for an employer to secretly pay
27 wages lower than required by statute while purporting to pay legal wages. As described above,
28 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all

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

9 **Refusal to Make Payment**

10 166. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
11 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
12 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
13 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
14 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
15 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
16 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
17 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

18 **Reporting Time Pay Violations.**

19 167. Section 5 of all applicable IWC Wage Orders, provides as follows:

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

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 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
2 minimum wage.

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

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

14 **Seating Violations.**

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

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

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

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

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

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

4 175. For example, DEFENDANTS failed to provide PLAINTIFF with suitable seating,
5 and when PLAINTIFF was not engaged in duties which required PLAINTIFF to stand, no seating
6 was placed in reasonable proximity to PLAINTIFF's workstation.

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

12 **Standard Conditions of labor Violations**

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

21 **Business Expense Violations**

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

28 179. Among other things, under California law, when employees must use their personal

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

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

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

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

18 183. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and other Aggrieved
19 Employees have suffered injury in that they were not completely reimbursed as mandated by
20 California law.

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

25 185. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
26 Employees have suffered injury in that they were not completely reimbursed as mandated by
27 California law.

28 186. Despite being aware of these business expenses, DEFENDANTS failed to reimburse

1 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
2 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
3 Code § 2802 and the applicable Wage Order.

4 **Wage Statement Violations**

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

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

22 189. Moreover, due to violations detailed above, including but not limited to,
23 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
24 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
25 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
26 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
27 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
28 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary

1 compensation earned during the pay period into the regular rate of pay for purposes of calculating
2 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
3 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

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

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

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

21 194. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
22 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
23 Employees over whether they received all wages owed to them.

24 195. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
25 they could not easily determine whether they received all wages owed to them and whether they
26 were paid for all hours worked.

27 196. Moreover, as a result of DEFENDANTS’ failure to list the correct name and/or
28 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered

1 injury as they could not contact their employer regarding any question(s) they had about wages paid.

2 197. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and
3 Aggrieved Employees with accurate, itemized wage statements.

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

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

16 **Unlawful Deductions**

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

23 201. Each violation results in a separate civil penalty, for each Aggrieved Employee, for
24 each pay period during which the statute provisions were violated. See Lab. Code §225.5
25 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
26 provided in this article, every person who unlawfully withholds wages due any employee in
27 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure

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

1 to pay each employee”).

2 **Sick Leave Violations**

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

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

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

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

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

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

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

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

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

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

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

18 **Untimely Payment of Final Wages**

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

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

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

4 214. Based on information and belief, upon separation of employment, Aggrieved
5 Employees' final paychecks were not timely provided, and/or were not timely provided with all
6 owed vacation pay/ and/or paid time off and/or did not include all wages owed, in violation of Labor
7 Code section 201-202. Based on information and belief, PLAINTIFF's and other Aggrieved
8 Employees' final paychecks did not include all wages owed as they are devoid of, including but not
9 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay and/or all paid
10 time off wages at the properly accrued rates (including but not limited to any owed shift differential
11 pay).

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

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

21 **Violation of Labor Code Section 208**

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

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

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

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

4 *Unlawful Agreements.*

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

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

22 221. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
23 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
24 432.5.

25 **Unlawful Inquires into Criminal History**

26 222. Labor Code section 432.7 prohibits an employer from asking applicants about past
27 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
28 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in

1 convictions on its employment application, in violation of California law.

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

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

12 **Violation of Labor Code Section 432.6**

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

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

20 227. Labor Code Section 432.6(b) provides in pertinent part:

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

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

1 refusal to waive their meal period rights.

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

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

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

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

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 8, 2024

CROSNER LEGAL, PC

By: 

Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff
EULOGIO RUVALCABA