

11/15/2024

By: M. Pipe Deputy

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

Attorneys for Plaintiff ROSE HINTON
on behalf of the State of California and all Aggrieved Employees

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SACRAMENTO**

11 ROSE HINTON, on behalf of the State of
12 California and all Aggrieved Employees,

13 Plaintiff,

14 v.

15 GLOBAL CONNECTION INC. OF
16 AMERICA, a Georgia Corporation;
17 APPLIED MARKETING SOLUTIONS
18 LLC, a California Limited Liability
Company; and DOES 1-100, inclusive,

19 Defendants.

Case No.: **24CV023324**

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

1 Plaintiff, ROSE HINTON (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants GLOBAL
3 CONNECTION INC. OF AMERICA, a Georgia Corporation; APPLIED MARKETING
4 SOLUTIONS LLC, a California Limited Liability Company; and DOES 1-100, inclusive,
5 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
6 thereon alleges as follows:

7 **INTRODUCTION**

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

11 2. At all times referenced herein, PLAINTIFF and other Aggrieved Employees were
12 employees of DEFENDANTS that were misclassified as independent contractors. PLAINTIFF and
13 other Aggrieved Employees worked for DEFENDANTS by helping solicit new customers for
14 DEFENDANTS and helping sign up new customers for DEFENDANTS’ services. PLAINTIFF
15 seeks to recover civil penalties for DEFENDANTS’ violations of the California Labor Code as
16 alleged herein.

17 **JURISDICTION AND VENUE**

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

20 4. Venue is proper in this judicial district and the County of Sacramento pursuant to
21 California Code of Civil Procedure section 395.5 because one or more of the DEFENDANTS
22 transact business within this judicial district and conduct alleged by PLAINTIFF herein occurred in
23 this this judicial district. *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60
24 Cal.App.5th 1069 (venue in a PAGA action is proper in any county where the defendants committed
25 Labor Code violations against some of its employees).

26 **THE PARTIES**

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

1 6. PLAINTIFF worked for DEFENDANTS as an advocate, spokesperson, salesperson
2 and/or similar title(s) and/or position(s) from in or around late 2023 through in or around August
3 2024. DEFENDANTS assigned PLAINTIFF to work in including, but not limited to, Sacramento,
4 California.

5 7. PLAINTIFF's job duties included, but were not limited to, signing up low-income
6 individuals for DEFENDANTS' phones and tablets via a government-funded phones and tablets
7 program and setting up DEFENDANTS' pop-up shops in Sacramento and the surrounding areas for
8 this purpose. PLAINTIFF regularly worked at least approximately three and one-half (3 ½) hours
9 to seven (7) hours per day, at least five (5) days per week, at times working more than eight (8)
10 hours in a day and/or more than forty (40) hours in a week. DEFENDANTS compensated on a flat-
11 rate and/or piece-rate basis (e.g., per account signup as determined and approved by
12 DEFENDANTS). At all relevant times, PLAINTIFF and other Aggrieved Employees were non-
13 exempt employees that were misclassified by DEFENDANTS as independent contractors.

14 8. Defendant GLOBAL CONNECTION INC. OF AMERICA is a Georgia Corporation
15 that, at all relevant times, was authorized to do business within the State of California and is doing
16 business in the State of California. Defendant GLOBAL CONNECTION INC. OF AMERICA
17 operates business under including, but not limited to, the name(s) "Standup Wireless." Defendant
18 GLOBAL CONNECTION INC. OF AMERICA does business as Standup Wireless and is referred
19 to herein as "Standup Wireless." Standup Wireless enrolls people into the Federal Lifeline Program
20 and the Affordable Connectivity Program (collectively the "Programs") which provide discounted
21 cell phone and/or land line services to qualifying customers.

22 9. Defendant APPLIED MARKETING SOLUTIONS LLC is a California Limited
23 Liability Company that at all relevant times was authorized to do business within the State of
24 California and is doing business in the State of California. Defendant APPLIED MARKETING
25 SOLUTIONS LLC provides workers, such as PLAINTIFF, to Standup Wireless to help sign up new
26 customers to Standup Wireless' services.

27 10. DEFENDANTS own, operate, manage and/or staff its employees to work at the pop-
28 up shops, shops/stores, facilities and/or other location(s) in California, including but not limited to

1 Sacramento County, California, and other counties throughout California. DEFENDANTS, through
2 its various locations, serve including but not limited to, the consumer goods and services industry.
3 Although DEFENDANTS may operate successful companies or have a noble mission,
4 DEFENDANTS do not comply with California's labor laws.

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

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

21 **JOINT LIABILITY**

22 13. Under California law, the definition of the terms "to employ" are broadly construed
23 Under California law, the definition of the terms "to employ" are broadly construed under the
24 applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise
25 control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3) to engage,
26 thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49 Cal.4th 35,
27 64 (2010). One reason that the IWC defined "employer" in terms of exercising control was to reach
28 situations in which multiple entities control different aspects of the employment relationship.

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

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

19 15. Defendant APPLIED MARKETING SOLUTIONS LLC (“AMS”) is in the business
20 of providing distribution support services including logistics services, marketing support/personnel,
21 recruiting and training in support of enrollment representatives and other workers in connection with
22 the Federal Lifeline Program and the Affordable Connectivity Program (collectively the
23 “Programs”).

24 16. Defendant AMS hires workers, such as PLAINTIFF, to solicit and sign up new
25 customers to Standup Wireless, a company in the business of providing wireless voice, Short
26 Message Service (text messages), data services and other services to customers that qualify for
27 services through the Programs.

28 17. Based on further information and belief, AMS and Standup Wireless entered into a

1 written agreement whereby AMS would and did engage PLAINTIFF to provide services to AMS in
2 connection with AMS' services to Standup Wireless including, but not limited to, engaging new
3 customers to sign up for the programs offered via Standup Wireless, such as, providing wireless
4 voice, Short Message Service (text messages), data services and other services to customers that
5 qualify for services through the Programs.

6 18. For example, AMS hired PLAINTIFF and entered into a written agreement with
7 PLAINTIFF. AMS maintained control over many aspects of PLAINTIFF's work, including, among
8 other things, having the authority to terminate PLAINTIFF's employment.

9 19. Based on information and belief, when PLAINTIFF was first hired, AMS provided
10 PLAINTIFF with orientation and training materials. AMS issued PLAINTIFF written policies
11 concerning payment of PLAINTIFF's compensation, with which PLAINTIFF was required to
12 comply, and AMS and Standup Wireless exercised ultimate control over the payment of
13 PLAINTIFF's compensation. Finally, AMS directed PLAINTIFF to comply with Standup
14 Wireless's policies and directions.

15 20. For example, based on information and belief, AMS directed PLAINTIFF to comply
16 with Standup Wireless' policies and/or directions, including, DEFENDANTS' policies and/or
17 directions prohibiting PLAINTIFF from making allowances or adjustments to Standup Wireless
18 customer accounts or invoices, issuing credits to customer accounts in settlement of claims by
19 customers and/or prohibiting PLAINTIFF from altering, enlarging, limiting orders, making
20 representations or guarantees or offering additional incentives to customers concerning the Products
21 without prior written approval by Standup Wireless.

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

25 22. Standup Wireless similarly suffered or permitted PLAINTIFF to work for them or
26 engaged PLAINTIFF to work for them. PLAINTIFF is informed and believes that Standup Wireless
27 entered into a written agreement with AMS, pursuant to which Standup Wireless paid AMS to
28 provide it with marketing support, including the provision of workers, such as PLAINTIFF, to

1 conduct Standup Wireless's business operations – namely, to provide services to AMS in connection
2 with AMS' services to Standup Wireless including but not limited to enrolling or registering
3 customers, providing Standup Wireless's materials to DEFENDANTS' customers, and signing up
4 customers for Standup Wireless' services.

5 23. Standup Wireless further exercised control over PLAINTIFF's compensation and
6 working conditions.

7 24. For example, any commissions due to PLAINTIFF was based wholly or partly upon
8 revenues received from DEFENDANTS' customers, and all collections for any revenues received
9 from DEFENDANTS' customers rested solely with Standup Wireless.

10 25. Also, as explained herein, PLAINTIFF was required to obtain Standup Wireless'
11 prior written approval before making any allowances or adjustments to customer accounts or
12 invoices, issuing credits to customer accounts in settlement of claims by customers and/or from
13 altering, enlarging, limiting orders, making representations or guarantees or offering additional
14 incentives to customers concerning the Products.

15 26. Standup Wireless also assigned PLAINTIFF's job duties, trained PLAINTIFF on
16 said job duties and/or exercised authority to end PLAINTIFF's work assignment for failure to
17 comply with DEFENDANTS' policies, the effective termination of employment. On information
18 and belief, Standup Wireless issued written policies and practices and guidelines governing
19 PLAINTIFF's working conditions with which PLAINTIFF was required to comply.

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

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

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

PAGA ALLEGATIONS

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

All individuals who currently or formerly worked for any one or more of the DEFENDANTS at any location in California at any time within one year plus 65 days from the filing of the initial Complaint through the present (“PAGA Period”).

COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS

31. PLAINTIFF, on August 28, 2024, through counsel, gave written notice by online filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via certified mail.

32. The PAGA Notice outlined PLAINTIFF's claims for violations of the California Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved Employees.

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

1 **FACTUAL ALLEGATIONS**

2 34. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees,
3 worked for DEFENDANTS in the State of California. At all times referenced herein,
4 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees and suffered and/or
5 permitted them to work.

6 35. PLAINTIFF worked for DEFENDANTS as an advocate, spokesperson, salesperson
7 and/or similar title(s) and/or position(s) from in or around late 2023 through in or around August
8 2024.

9 36. DEFENDANTS assigned PLAINTIFF to work in including but not limited to,
10 Sacramento, California.

11 37. PLAINTIFF's job duties included, but were not limited to, signing up low-income
12 individuals for DEFENDANTS' phones and tablets via a government-funded phones and tablets
13 program and setting up DEFENDANTS' pop-up shops in Sacramento and the surrounding areas for
14 this purpose.

15 38. PLAINTIFF regularly worked at least approximately three and one-half (3 ½) hours
16 to seven (7) hours per day, at least five (5) days per week, at times working more than eight (8)
17 hours in a day and/or more than forty (40) hours in a week.

18 39. DEFENDANTS compensated PLAINTIFF on a flat-rate and/or piece-rate basis (e.g.,
19 per signup).

20 40. At all relevant times, PLAINTIFF and other Aggrieved Employees were non-exempt
21 employees that were misclassified by DEFENDANTS as independent contractors.

22 41. **Willful Misclassification as an Independent Contractor.** California Labor Code
23 section 226.8 makes it illegal to willfully misclassify an employee as an independent contractor,
24 providing: "[i]t is unlawful for any person or employer to engage in any of the following activities:
25 (1) Willful misclassification of an individual as an independent contractor. (2) Charging an
26 individual who has been willfully misclassified as an independent contractor a fee, or making any
27 deductions from compensation, for any purpose, including for goods, materials, space rental,
28 services, government licenses, repairs, equipment maintenance, or fines arising from the

1 individual's employment where any of the acts described in this paragraph would have violated the
2 law if the individual had not been misclassified." California Labor Code section 226.8 (a).

3 42. Throughout the relevant period, DEFENDANTS misclassified PLAINTIFF and
4 other Aggrieved Employees as independent contractors as opposed to employees to evade California
5 wage and hour laws. To qualify as an independent contractor under California law, (a) the worker
6 must be free from the employer's control and direction in the performance of the work, both under
7 the contract for the performance of the work and in fact; (b) the work performed must be outside the
8 usual course of the employer's business; and (c) the worker must not be customarily engaged in an
9 independently established trade, occupation, or business of the same nature as the work he
10 performed for employer. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903;
11 Labor Code Section 2775. All three conditions must be met, or the worker has been misclassified.

12 43. Despite DEFENDANTS' efforts to evade California wage and hour laws by setting
13 up an alleged contractor scheme, the reality is that PLAINTIFF and other misclassified Aggrieved
14 Employees are and were, in fact, at all relevant times, employees according to the law, in that: (a)
15 PLAINTIFF and other Aggrieved Employees are/were not free from DEFENDANTS' control and
16 direction in the performance of work, both under the contract for the performance of the work and
17 in fact; (b) the work PLAINTIFF and other Aggrieved Employees perform/performed is/was
18 entirely within the usual course of the DEFENDANTS' business; and (3) PLAINTIFF and other
19 Aggrieved Employees are not/were not customarily engaged in an independently established trade,
20 occupation, or business of the same nature as the work they perform/performed for DEFENDANTS.

21 a. PLAINTIFF and Aggrieved Employees are/were not free from DEFENDANTS'
22 control and direction in the performance of work, both under the contract for the performance of the
23 work and in fact. DEFENDANTS control and direct PLAINTIFF's and other Aggrieved
24 Employees' work and compensation.

25 b. For example, DEFENDANTS implemented rules, policies and/or standards that
26 PLAINTIFF and other Aggrieved Employees were required to comply with in order to continue
27 working for DEFENDANTS. For example, PLAINTIFF only had the authority to sell and market
28 DEFENDANTS' products and services using techniques, strategies or methods that complied with

1 DEFENDANTS' rules, policies and/or written agreements. As such, DEFENDANTS controlled the
2 way in which PLAINTIFF performed PLAINTIFF's work. Also, DEFENDANTS controlled and/or
3 directed PLAINTIFF's and other Aggrieved Employees' workdays, including but not limited to
4 tasks that must be completed and the manner in which they must be completed. For example,
5 DEFENDANTS required that PLAINTIFF and other Aggrieved Employees follow
6 DEFENDANTS' rules and meet DEFENDANTS' expectations including but not limited to the
7 following rules as outlined in policies DEFENDANTS distribute to Aggrieved Employees.

8 c. For example, any customers' accounts and enrollments obtained by PLAINTIFF
9 were subject to acceptance by AMS and/or by Standup Wireless in DEFENDANTS' sole discretion,
10 PLAINTIFF had no authority to bind Standup Wireless or AMS, or to make any acceptances or
11 deliver commitments on behalf of Standup Wireless or AMS to any of DEFENDANTS' customers,
12 unless approved by Standup Wireless.

13 d. Also, Standup Wireless at all times had the sole right of credit approval or credit
14 refusal for all of DEFENDANTS' customer accounts and enrollments. Based on further information
15 and belief, Standup Wireless rendered all invoices for Products directly to DEFENDANTS'
16 customers, and invoice payments by customers were made directly to Standup Wireless. Moreover,
17 any commissions due PLAINTIFF was based wholly or partly upon revenues received from
18 DEFENDANTS' customers and all collections for any revenues received from DEFENDANTS'
19 customers rested solely with Standup Wireless.

20 e. Second, based on information and belief, DEFENDANTS require that Aggrieved
21 Employees meet quotas and/or standards implemented by DEFENDANTS.

22 f. Third, DEFENDANTS controls/controlled and/or directs/directed PLAINTIFF's and
23 other Aggrieved Employees' workdays, including but not limited to tasks that must be completed
24 and the manner in which they must be completed. For example, DEFENDANTS require that
25 Aggrieved Employees follow DEFENDANTS' rules and meet DEFENDANTS' expectations
26 including but not limited to the following rules as outlined in policies DEFENDANTS distributes
27 to Aggrieved Employees. Additionally, based on information and belief, DEFENDANTS monitor
28 Aggrieved Employees' communications and activities, including but not limited to the quantity

1 and/or quality of devices/plans sold and/or transactions/signups completed. As a result,
2 DEFENDANTS controls/controlled and directs/directed PLAINTIFF's and other Aggrieved
3 Employees' work.

4 g. The work PLAINTIFF and the Aggrieved Employees perform/performed work
5 is/was entirely within the usual course of the DEFENDANTS' business of providing consumer
6 goods and services, among other services. DEFENDANTS is in the business of providing including
7 but not limited to consumer goods and services for a government-funded program to benefit
8 individuals with low incomes, and PLAINTIFF and Aggrieved Employees work/worked in various
9 positions including but not limited to as advocates, spokespersons, salespersons, and/or similar
10 title(s) and/or position(s) in order to conduct DEFENDANTS' business. The work that PLAINTIFF
11 and the Aggrieved Employees perform/performed is/was therefore not a distinct occupation or an
12 incidental or tangential part of DEFENDANTS' operations, but rather is/was central to
13 DEFENDANTS' business, as PLAINTIFF and other Aggrieved Employees worked to sign up new
14 customers to Standup Wireless.

15 h. PLAINTIFF and the Aggrieved Employees are not/were not customarily engaged in
16 an independently established trade, occupation, or business of the same nature as the work they
17 perform/performed for DEFENDANTS. PLAINTIFF and the Aggrieved Employees do not/did not
18 incur profits or losses; instead, DEFENDANTS manage/managed the business operation,
19 attracts/attracted any investors and customers/clients, advertises/advertised to potential
20 customers/clients and secures/secured customers/clients. PLAINTIFF and the Aggrieved
21 Employees do not/have not made any capital investment in any of DEFENDANTS' facilities or
22 advertising or DEFENDANTS' mobile app/other electronic systems. PLAINTIFF and the
23 Aggrieved Employees do not/did not own an independent business enterprise, and do not/did not
24 maintain any separate business structures or facilities. PLAINTIFF and the Aggrieved Employees
25 do not/did not hire or subcontract other individuals to provide additional services to customers as
26 independent contractors in business for themselves would do. Instead, DEFENDANTS unilaterally
27 label PLAINTIFF and other Aggrieved Employees as independent contracts and require them to
28 enter into contracts labeling them as such, when they in fact, are not independent contractors.

1 44. Based on the work relationship described above, there can be no doubt that
2 PLAINTIFF and other Aggrieved Employees were at all relevant times DEFENDANTS' employees
3 – not independent contractors. At all relevant times, PLAINTIFF and other Aggrieved Employees
4 were in fact, non-exempt employees of DEFENDANTS. Thus, DEFENDANTS' conduct
5 constitutes an intentional, willful pattern and/or practice of misclassification.

6 45. DEFENDANTS misclassified and continue to misclassify PLAINTIFF and other
7 Aggrieved Employees as independent contractors to try to evade California labor laws that protect
8 employees, such as but not limited to, minimum and overtime wage and sick pay laws, expense
9 reimbursement requirements, record-keeping requirements, wage statement requirements, and
10 requirements as to the timely payment of wages during and upon separation of employment.

11 46. As part of its misclassification scheme, DEFENDANTS have failed and continue to
12 fail to pay minimum and overtime wages, violated and continues to violate sick pay requirements,
13 failed and continues to fail to reimburse business expenses, failed and continues to fail to keep
14 accurate and complete payroll records, failed and continues to fail to furnish timely, accurate
15 itemized wage statements, failed and continues to fail to timely pay all wages due and owing upon
16 separation of employment, and failed and continues to fail to pay all wages owed every pay period,
17 among other labor code violations, described in further detail below.

18 47. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
19 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
20 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
21 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
22 rounding policies, failure to relieve employees of all duties/employer control during unpaid meal
23 periods or otherwise unlawful practices for missed or improper meal periods, piece-rate
24 compensation scheme and/or willful misclassification scheme, as explained below.

25 48. DEFENDANTS willfully misclassified PLAINTIFF and other Aggrieved
26 Employees and continue to willfully misclassify Aggrieved Employees as independent contractors
27 to evade California's minimum wage laws.

28 49. DEFENDANTS suffered and permitted PLAINTIFF and other Aggrieved

1 Employees to work off the clock without proper compensation, resulting in unpaid minimum and
2 overtime wages. DEFENDANTS required PLAINTIFF and Aggrieved Employees to engage in pre-
3 shift and post-shift off-the-clock work, which resulted in the underpayment of minimum and
4 overtime wages.

5 50. For example, based on information and belief, DEFENDANTS instituted a piece-
6 rate-based compensation scheme that resulted in pay periods during which Aggrieved Employees
7 were denied the minimum wage for all hours worked. For example, on information and belief,
8 DEFENDANTS paid Aggrieved Employees and/or PLAINTIFF on a strictly piece-rate basis (e.g.,
9 per signup and/or a flat percentage of invoice for service performed), at least during some pay
10 periods, during the relevant time period. However, based on information and belief, DEFENDANTS
11 failed to separately compensate Aggrieved Employees for all non-piece rate related activities/all
12 non-productive time, including but not limited to, all rest breaks, travel time between
13 jobs/assignments, time spent preparing for jobs/assignments, time spent completing work-related
14 paperwork and/or reviewing DEFENDANTS' policies and or standby and/or waiting time between
15 jobs and/or tasks, time spent accessing and/or troubleshooting DEFENDANTS' electronic
16 systems/apps, time spent communicating with DEFENDANTS, including but not limited to, time
17 spent updating DEFENDANTS as to the status of jobs/assignments, time spent communicating with
18 DEFENDANTS regarding customers/clients and/or scheduling and/or other work tasks and/or time
19 spent purchasing, compiling and/or maintaining work tools, equipment and/or supplies required to
20 perform their assigned job duties, and/or performing work duties that otherwise fall outside of the
21 piece-rate pay criteria. DEFENDANTS' failure to separately compensate Aggrieved Employees for
22 their rest periods and/or other non-productive time and/or failure to compensate them at the correct
23 rates for all non-productive time including rest periods resulted in the failure to pay Aggrieved
24 Employees for all hours worked and violations of California wage and hour laws, including but not
25 limited to, Labor Code sections 226.2 and/or 1197. Based on information and belief,
26 DEFENDANTS further failed to include this information on these employees' wage statements
27 required by Labor Code section 226.2.

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

1 Employees for time they were required to spend completing orientation, policy questionnaires,
2 and/or time spent completing the onboarding process including but not limited to reviewing various
3 documents and policies provided by DEFENDANTS. Based on information and belief, this work time
4 was completed off-the-clock and was not compensated. For example, based on information and
5 belief, DEFENDANTS required Aggrieved Employees to review and sign various types of policies
6 and documents, including but not limited to, safety guidelines/safety awareness certifications,
7 among other documents, but they were not paid for all time spent reviewing and/or completing
8 certification as directed by DEFENDANTS.

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

28 53. DEFENDANTS violated sections 558, 1194, 1194.2, and 1197 by failing to

1 compensate PLAINTIFF and other Aggrieved Employees for all hours worked at the legal minimum
2 wage rate. These violations subject employer to civil penalties under Labor Code Sections 1197.1,
3 1194.2, and all applicable Wage Orders §20, and Labor Code section 2699.

4 54. Based on information and belief, DEFENDANTS violated California's overtime
5 laws by, among other things, failing to correctly calculate, or record, the total number of hours
6 worked by PLAINTIFFS and other Aggrieved Employees and not paying proper overtime rates for
7 overtime worked by virtue of same.

8 55. Namely, DEFENDANTS' misclassification scheme and/or other off-the-clock work
9 policies and practices resulted in the failure to account for all hours worked and thus the denial of
10 minimum wages as well as overtime wages owed to PLAINTIFFS and Aggrieved Employees who
11 worked more than eight (8) hours in a day or more than forty (40) hours in a week.

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

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

19 58. Based on information and belief, to the extent DEFENDANTS paid overtime
20 premiums at all, DEFENDANTS calculated the owed overtime rate(s) based on the California
21 minimum wage rate as opposed to calculating the overtime rate(s) based on the minimum wage
22 established for the city and/or county in which the AGGRIEVED EMPLOYEE worked, resulting
23 in the miscalculation and underpayment of overtime wages owed to those Aggrieved Employees.

24 59. Based on information and belief, to the extent overtime wages were paid at all,
25 DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited
26 to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay
27 into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the
28 miscalculation and underpayment of overtime wages owed to PLAINTIFF and other Aggrieved

1 Employees.

2 60. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
3 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
4 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
5 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
6 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
7 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
8 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
9 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
10 completely.

11 61. DEFENDANTS willfully misclassified and continue to willfully misclassify
12 PLAINTIFF and similarly Aggrieved Employees as independent contractors to evade California
13 meal period laws.

14 62. DEFENDANTS did not authorize or permit PLAINTIFF and other Aggrieved
15 Employees to take timely thirty-minute meal periods. DEFENDANTS failed to instruct PLAINTIFF
16 and other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on
17 information and belief, DEFENDANTS did not have a lawful written meal period policy, nor did
18 DEFENDANTS have any sort of compliant policy in practice. Liability for the Aggrieved
19 Employees can be established by evidence that an employer adopted a uniform corporate break
20 policy that failed to give full effect to California law and the applicable Wage Order requirements.
21 The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*,
22 53 Cal.4th 1004.

23 63. PLAINTIFF and other Aggrieved Employees consistently worked shifts of five and
24 a half hours or more entitling them to at least one meal period. However, PLAINTIFF and other
25 Aggrieved Employees would not receive a legally compliant thirty (30) minute meal period.
26 PLAINTIFF and other Aggrieved Employees regularly take a meal period after working more than
27 five hours due to the nature and constraints of their job duties and/or lack of relief workers available.
28 Many times, if not always, PLAINTIFF is unable to take a timely meal period due to PLAINTIFF's

1 need to communicate with customers/potential customers and/or complete other work tasks. At
2 other times, PLAINTIFF takes a late meal period due to the need to continue completing assigned
3 job duties.

4 64. Moreover, based on information and belief, Aggrieved Employees that work shifts
5 of more than ten hours do not receive a second legally compliant thirty (30) minute meal period.

6 65. Based on information and belief, DEFENDANTS had actual and/or constructive
7 knowledge that its policies and practices resulted in the denial of timely, uninterrupted meal periods
8 which were free of DEFENDANTS's control owed to PLAINTIFF and other Aggrieved Employees,
9 in violation of California's meal period laws.

10 66. Despite not providing PLAINTIFF and other Aggrieved Employees with lawful meal
11 periods to which they were legally entitled, DEFENDANTS failed to pay a meal period premium at
12 the regular rate of pay for each missed or otherwise unlawful meal period, in violation of California
13 law. Based on information and belief, PLAINTIFF and other Aggrieved Employees were never paid
14 a meal period premium for any missed/improper meal period in violation of California law.

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

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

23 69. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
24 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
25 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
26 did DEFENDANTS have any sort of compliant policy in practice.

27 70. Based on information and belief, DEFENDANTS had actual and/or constructive
28 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods

1 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
2 violation of California's meal period laws.

3 71. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
4 additional hour of wages at their respective regular rates of compensation for each workday a lawful
5 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
6 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
7 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
8 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
9 compensation for purposes of calculating the owed meal period premium.

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

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

18 74. Based on information and belief, DEFENDANTS did not have a have a compliant
19 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
20 practice. For example, based on information and belief, PLAINTIFF was at times, unable to take
21 compliant rest periods due to PLAINTIFF's need to complete assigned job duties and/or was unable
22 to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted
23 to DEFENDANTS' premises/his workstation due to the need to continue completing assigned job
24 duties.

25 75. DEFENDANTS willfully misclassified and continues to willfully misclassify
26 PLAINTIFF and similarly Aggrieved Employees as independent contractors to evade California rest
27 period laws.

28 76. DEFENDANTS did not and does not properly authorize and provide PLAINTIFF

1 and other Aggrieved Employees with legally compliant rest periods at a rate of every four (4) hours
2 worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work
3 period, as required by law.

4 77. DEFENDANTS and other Aggrieved Employees were not adequately informed,
5 authorized, instructed about, nor permitted an opportunity to take lawful rest periods per California
6 law.

7 78. Any purported rest periods were cut short, skipped and/or late due to the nature and
8 constraints of PLAINTIFF's and other Aggrieved Employees' job duties, pressure to complete tasks
9 in a timely manner, and/or lack of relief workers available. Based on information and belief,
10 Aggrieved Employees were pressured to complete their work duties such that rest periods were only
11 taken once tasks were completed, and/or as time permitted.

12 79. DEFENDANTS has no lawful policy in place nor instruction as to the taking, timing,
13 or duty-free nature of rest periods. Moreover, DEFENDANTS failed to pay a rest period premium
14 at the regular rate of pay for each workday that DEFENDANTS did not provide at least one legally
15 required rest period, in violation of California law. Based on information and belief, PLAINTIFF
16 and other Aggrieved Employees were never paid a rest period premium for any missed/improper
17 rest period in violation of California law.

18 80. The aforementioned conduct results in violations of Labor Code sections 226.7, and
19 1198-1199, and all applicable Wage Orders, §12(A). These violations subject DEFENDANTS to
20 civil penalties under Labor Code section 2699, and all applicable IWC Wage Orders, §20.. Each
21 violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty,
22 for each AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and
23 Wage Order provisions were violated.¹

24 81. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
25 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied

26 ¹ See Lab. Code §2699(f) and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil
27 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
28 to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid”).

1 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
2 Employees with meal and rest periods that complied with Labor section 226.7, any wage statements
3 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
4 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
5 applicable hourly rates in effect during the pay period and the corresponding number of hours
6 worked at each hourly rate by the employee.

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

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

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

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

25 86. Additionally, in violation of Labor Code section 226.2, DEFENDANTS failed to
26 issue accurate wage statements in accordance with Labor Code section 226, by issuing wage
27 statements that failed to list the total hours of compensable non-productive time, and the total hours
28 of rest periods, the rate of compensation for the non-productive time and/or rest periods, and the

1 gross wage earned for the non-productive time and for the rest periods during the pay period for
2 which the Aggrieved Employees were paid on a commission and/or piece rate basis.

3 87. As such, DEFENDANTS' issued wage statements to Aggrieved Employees that did
4 not include all of the statutorily required information, including but not limited to, the correct name
5 and/or address of the legal entity that is the employer.

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

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

12 90. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
13 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
14 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
15 from Aggrieved Employees paychecks during the relevant period including without limitation,
16 deducting tips/gratuities and/or business costs from Aggrieved Employees' earned wages.

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

22 92. Such a practice is in violation of including but not limited to, Labor Code Sections
23 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

24 93. **Failure to Produce Employment Records.** Based on information and belief,
25 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
26 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
27 sections 226, 1198.5, 432, and/or the applicable Wage Order.

28 94. For example, PLAINTIFF, through counsel, sent a written request for payroll and

1 personnel records to DEFENDANTS on or around including but not limited to the following date(s):
2 August 29, 2024. Yet, DEFENDANTS failed to timely produce complete records within the time
3 periods delineated by California labor law. Based on information and belief, DEFENDANTS failed
4 and continue to fail to timely produce complete time, pay, and personnel records when requested by
5 other Aggrieved Employees.

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

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

20 97. **Failure to Provide Written Commission Agreements.** Labor Code section 2751
21 requires that all commission contracts "be in writing and . . . set forth the method by which the
22 commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute,
23 employers must also "give a signed copy of the contract to every employee who is a party [to the
24 contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section 2751(b).

25 98. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
26 Aggrieved Employees who were compensated on a commission basis with proper written
27 commission agreements, in violation of Labor Code section 2751.

28 99. **Violation of Labor Code Section 226.2.** Labor Code section 226.2 requires an

1 employer to pay employees compensated on a piece-rate basis separately for rest and recovery
2 periods and nonproductive time, apart from any piece-rate pay. This statute further requires an
3 employer to include on the wage statements for these employees the total hours of compensable rest
4 and recovery period, the total hours for other non-productive time, the rates of compensation for
5 these hours, and the gross wages paid for these hours. In addition, the statute requires that employees
6 shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the
7 higher of: (i) an average hourly rate determined by dividing the total compensation for the
8 workweek, exclusive of compensation for rest and recovery periods and any premium compensation
9 for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods,
10 or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to
11 employees compensated on a commission basis.

12 100. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
13 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
14 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
15 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
16 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
17 226.2.

18 101. **Unreimbursed Business Expenses.** Based on information and belief,
19 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
20 as a 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 other
22 Aggrieved Employees were improperly required to provide and maintain work tools that are
23 supposed to be the responsibility of the employer.

24 102. Based on information and belief, DEFENDANTS shifted the costs of doing business
25 onto Aggrieved Employees by requiring them to pay for business expenses. For example, based on
26 information and belief DEFENDANTS required Aggrieved Employees to pay for business expenses
27 including but not limited to, uniforms/work clothing/work shoes/personal protective/safety gear and
28 the use of Aggrieved Employees' personal vehicles and/or personal cell phones/mobile devices,

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

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

7 104. Based on information and belief, at times, Aggrieved Employees were not
8 reimbursed for the cost of purchasing and/or maintaining their own hand tools and/or equipment
9 required to perform their assigned job duties and/or for the costs of purchasing and/or maintaining
10 work uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

11 105. For example, DEFENDANTS required PLAINTIFF to supply her own work
12 tools/equipment to carry out her assigned job duties, including without limitation, all work tools
13 and/or equipment required to set up DEFENDANTS' pop-up shops at which DEFENDANTS
14 assigned PLAINTIFF to work, however, DEFENDANTS did not provide PLAINTIFF with any
15 reimbursement for these business expenses.

16 106. As explained above, based on information and belief, Aggrieved Employees were
17 not reimbursed for the cost of using their personal phone for work-related purposes, the cost of
18 purchasing and/or maintaining work tools/equipment and/or the cost of purchasing and/or
19 maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

20 107. Based on information and belief, DEFENDANTS regularly failed to reimburse and
21 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
22 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
23 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
24 assigned by DEFENDANTS.

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

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

11 **110.** Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
12 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
13 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
14 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
15 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
16 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
17 used sick leave and the balance of paid sick leave.

18 **111.** Based on information and belief, throughout the relevant time period,
19 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
20 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
21 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
22 prior to their respective separations, for as on several occasions thereafter, he or she would have
23 been entitled to use the banked sick leave and earn appropriate compensation.

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

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

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

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

17 116. Upon separation of employment, Aggrieved Employees' final paychecks were not
18 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
19 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
20 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
21 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
22 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate
23 including non-discretionary compensation, including but not limited to, shift differentials). For
24 example, DEFENDANTS failed to furnish PLAINTIFF with any final paycheck for at least
25 approximately seven (7) days following the separation of PLAINTIFF's employment, and
26 PLAINTIFF's late final paycheck was devoid of all wages owed, including but not limited to, all
27 owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or
28 paid time off wages at the properly accrued rates, (including but not limited to, all owed vacation

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

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

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

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

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

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

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

27 (B) When employees are not engaged in the active duties of their employment and the
28 nature of the work requires standing, an adequate number of suitable seats shall be placed in

1 reasonable proximity to the work area and employees shall be permitted to use such seats when it
2 does not interfere with the performance of their duties.

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

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

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

15 125. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

16 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.
17

18 126. Based on information and belief, DEFENDANTS required Aggrieved Employees to
19 agree in writing to unlawful conditions of employment including but not limited to unlawful
20 independent contractor agreements, non-solicitation/non-compete agreements, unlawful
21 confidentiality and/or nondisclosure agreements, including but not limited to, unlawful requirements
22 to not disclose compensation, unlawful releases and/or waivers, unlawful forum selection clauses
23 and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a
24 condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

25 Unlawful Independent Contractor Agreements
26

27 127. Based on information and belief, DEFENDANTS have a policy and practice of
28

1 requiring Aggrieved Employees to agree, in writing, to terms and/or conditions DEFENDANTS
2 know are unlawful, including but not limited to, unlawful independent contractor agreements. For
3 example, DEFENDANTS have a policy and practice of requiring misclassified Aggrieved
4 Employees to sign unconscionable and/or otherwise unlawful agreements and/or provisions, such
5 as, but not limited to, agreements and/or provisions misclassifying Aggrieved Employees as
6 independent contractors. For example, DEFENDANTS required PLAINTIFF to sign
7 unconscionable and/or otherwise unlawful agreements and/or provisions such as but not limited to,
8 agreements and/or provisions that misclassified PLAINTIFF as an independent contractor, as a
9 condition of obtaining and/or maintaining employment, in violation of including but not limited to,
10 Labor Code section 432.5.

11 128. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
12 condition of employment, DEFENDANTS violated Labor Code section 432.5.

13
14 Unlawful Inquires into Criminal History

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

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

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

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

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

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

Willful Misclassification as an Independent Contractor

133. California Labor Code section 226.8 makes it illegal to willfully misclassify an employee as an independent contractor, providing: “[i]t is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor. (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual’s employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.” California Labor Code section 226.8 (a).

134. As explained above, throughout the relevant period, DEFENDANTS misclassified PLAINTIFF and other Aggrieved Employees as independent contractors as opposed to employees in violation of Labor Code section 226.8. This misclassification scheme resulted in additional Labor Code violations described herein.

Failure to Keep Accurate Records

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

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

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

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

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

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

23 140. Personnel Records. In addition to their right to time and pay records, employees, and
24 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
25 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
26 section 432 further specifies that employers must furnish copies of all employment records bearing
27 the employee’s signature. Labor Code section 1198.5 also requires that the file be made available
28

1 for inspection or receipt within a “reasonable” amount of time, but “not later than 30 calendar days
2 from the date the employer receives a written request.” An employer’s failure to comply within this
3 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
4 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

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

9 **Meal Period Violations**

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

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

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

26 145. Employers must pay employees an additional hour of wages at the employees’
27 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
28 meal period, first meal period provided after five (5) hours, second meal period provided after 10

1 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to
2 provide an employee a meal period in accordance with the applicable provision of this Order, the
3 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation
4 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

5 146. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
6 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
7 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
8 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
9 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
10 periods completely. PLAINTIFF and misclassified Aggrieved Employees were also denied all owed
11 meal periods due to DEFENDANTS’ unlawful misclassification scheme.

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

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

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

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

27 151. These unlawful meal period policies and practices result in violations of Labor Code
28 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject

1 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
2 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
3 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

4 **Rest Period Violations**

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

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

1 154. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
2 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
3 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
4 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
5 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
6 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

12 156. PLAINTIFF and misclassified Aggrieved Employees were also denied all owed rest
13 periods due to DEFENDANTS' unlawful misclassification scheme.

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

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

22 159. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
23 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
24 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

25 **Minimum and Overtime Wage Violations**

26 160. California law provides that employees in California must be paid for all hours
27 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
28 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.

1 The minimum wage standard applies to each hour employees worked for which they were not paid.
2 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
3 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
4 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

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

19 163. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
20 Aggrieved Employees for all hours worked.

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

27 165. Based on information and belief, DEFENDANTS failed to pay twice Aggrieved
28 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for

1 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
2 violation of California's overtime laws.

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

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

14 **Failure to Provide Written Commission Agreements**

15 168. Labor Code section 2751 requires that all commission contracts "be in writing and .
16 . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code
17 section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract
18 to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract
19 from each employee." *Id.* section 2751(b).

20 169. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF,
21 Aggrieved Employees who were compensated on a commission basis with proper written
22 commission agreements, in violation of Labor Code section 2751.

23 **Violation of Labor Code Section 226.2**

24 170. Labor Code section 226.2 requires an employer to pay employees compensated on a
25 piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any
26 piece-rate pay. This statute further requires an employer to include on the wage statements for these
27 employees the total hours of compensable rest and recovery period, the total hours for other non-
28 productive time, the rates of compensation for these hours, and the gross wages paid for these hours.

1 In addition, the statute requires that employees shall be compensated for rest and recovery periods at
2 a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by
3 dividing the total compensation for the workweek, exclusive of compensation for rest and recovery
4 periods and any premium compensation for overtime, by the total hours worked during the
5 workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case
6 law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

7 171. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
8 Employees who were paid solely on a piece rate and/or commission basis separately for the rest
9 periods and nonproductive time, and/or failed to pay them for this time at the correct rates. Based
10 on information and belief, DEFENDANTS further failed to include this information on Aggrieved
11 Employees' wage statements. As such, DEFENDANTS failed to comply with Labor Code section
12 226.2.

13 **Statutory Wage Violations**

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

25 **Refusal to Make Payment**

26 173. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
27 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
28 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all

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

6 **Seating Violations**

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

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

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

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

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

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

25 178. Moreover, based on information and belief, the nature of the work reasonably
26

27 ³ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

1 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
2 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
3 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
4 of seats would not interfere with the performance of their duties.

5 179. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
6 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
7 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
8 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
9 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
10 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
11 Aggrieved Employee, results in a separate civil penalty.

12 **Standard Conditions of Labor Violations**

13 180. 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**

22 181. 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."

28 182. 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.

8 183. 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.

12 184. 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.

14 185. 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.

18 186. 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.

21 187. 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.

25 188. 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.

28 189. 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**

5 190. 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.

14 191. 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).

22 192. 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.

4 193. 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).

11 194. 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).

15 195. 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.

19 196. 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.

21 197. 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.

24 198. 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.

27 199. 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.

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

4 201. 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.

13 202. 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. ⁴

16 **Unlawful Deductions**

17 203. 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, including but not limited to, from paychecks of employees
21 correctly classified as exempt, during the relevant period, including but not limited to deducting
22 business costs and/or deducting wages for purported overpayments from previous pay periods
23 and/or unlawfully deducting wages for negligently damaged property and/or deducting costs
24 advanced by DEFENDANTS from Aggrieved Employees' final paychecks. Such a practice is in
25 violation of including but not limited to, Labor Code Sections 221-222 which subjects
26 DEFENDANTS to civil penalties under Labor Code Section 2699.

27
28 ⁴ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 **Reporting Time Pay Violations**

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

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

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

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

22 **Sick Leave Violations**

23 208. DEFENDANTS violated California's paid sick leave laws including, Labor Code
24 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
25 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
26 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
27 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
28 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary

1 compensation into the sick leave pay rate calculation.

2 209. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
3 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
4 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
5 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
6 Aggrieved Employees’ intelligent exercise of their paid sick leave.

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

11 211. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
12 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
13 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
14 were entitled to the maximum number of hours accruable.

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

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

21 214. On information and belief, PLAINTIFF alleges that all of these practices were
22 experienced and continue to be experienced by other Aggrieved Employees.

23 215. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
24 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
25 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

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

27 216. California Labor Code section 227.3 provides that when an employer policy provides
28 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,

1 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
2 employee's final rate in accordance with such contract of employment or employer policy respecting
3 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
4 off upon termination.

5 217. Based on information and belief, DEFENDANTS had and continue to have a
6 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
7 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
8 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
9 discretionary compensation, including but not limited to, shift differentials) to Aggrieved
10 Employees upon separation of employment, in violation of California law, including but not limited
11 to, Labor Code section 227.3.

12 **Untimely Payment of Final Wages**

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

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

26 220. Based in information and belief, DEFENDANTS failed and continue to fail to timely
27 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
28 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF

1 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not
2 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
3 sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all
4 owed vacation pay/paid time off paid at the final rate including non-discretionary compensation,
5 including but not limited to, shift differentials). For example, DEFENDANTS failed to furnish
6 PLAINTIFF with any final paycheck for at least approximately seven (7) days following the
7 separation of PLAINTIFF's employment, and PLAINTIFF's late final paycheck was devoid of all
8 wages owed, including but not limited to, all owed minimum wages, overtime wages, premium
9 wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates,
10 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
11 discretionary compensation, including but not limited to, shift differentials).

12 221. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
13 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
14 256.

15 **Violation of Labor Code Section 208**

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

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

25 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

26 224. *Unlawful Agreements.* Labor Code section 432.5 provides that "no employer...shall
27 require any employee or applicant for employment to agree, in writing, to any term or condition
28 which is known by such employer...to be prohibited by law." DEFENDANTS required and

1 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
2 conditions of employment including but not limited to unlawful independent contractor agreements,
3 non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure
4 agreements, including but not limited to, unlawful requirements to not disclose compensation,
5 unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law
6 provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining
7 and/or continuing employment in violation of Labor Code section 432.5.

8 Unlawful Independent Contractor Agreements

9 225. Based on information and belief, DEFENDANTS have a policy and practice of
10 requiring Aggrieved Employees to agree, in writing, to terms and/or conditions DEFENDANTS
11 know are unlawful, including but not limited to, unlawful independent contractor agreements. For
12 example, DEFENDANTS have a policy and practice of requiring misclassified Aggrieved
13 Employees to sign unconscionable and/or otherwise unlawful agreements and/or provisions, such
14 as, but not limited to, agreements and/or provisions misclassifying Aggrieved Employees as
15 independent contractors. For example, DEFENDANTS required PLAINTIFF to sign
16 unconscionable and/or otherwise unlawful agreements and/or provisions such as but not limited to,
17 agreements and/or provisions that misclassified PLAINTIFF as an independent contractor, as a
18 condition of obtaining and/or maintaining employment, in violation of including but not limited to,
19 Labor Code section 432.5.

20 226. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
21 condition of employment, DEFENDANTS violated Labor Code section 432.5.

22 Unlawful Inquires into Criminal History

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

27 228. Upon information and belief, DEFENDANTS, in violation of California law,
28 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act

1 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
2 employment and/or otherwise impermissibly inquired into criminal history on its employment
3 application in violation of California law.

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

9 Under the provisions of PAGA and the above mentioned Labor Code sections,
10 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.2,
11 226.7, 226.8, 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
12 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2751, 2802, 2810.5 and all applicable Wage Orders as
13 well as all interpretations of these laws by California Courts and administrative bodies, as well as
14 any other law that is enforceable through PAGA, DEFENDANTS are liable for the following
15 penalties:

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

25 230. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
26 PLAINTIFF is entitled to recover civil penalties, costs, and attorney’s fees.
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 PLAINTIFF, 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 15, 2024

CROSNER LEGAL, PC

By: 

Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff
ROSE HINTON