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on behalf of the State of California and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CONNOR ANGEL, on behalf of the State of
California and all Aggrieved Employees,

Plaintiff,

v.

ELLIOTT HOMES, INC., an Arizona
Corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: **24CV023595**

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

1 Plaintiff, CONNOR ANGEL, (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants ELLIOTT
3 HOMES, INC., an Arizona Corporation; and DOES 1-100, inclusive (collectively referred to herein
4 as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

5 **INTRODUCTION**

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

10 **JURISDICTION AND VENUE**

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

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

20 **THE PARTIES**

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

23 5. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
24 title(s) of detailer and/or a similar title(s) and/or job position(s) from in or around February 2020
25 through in or around February 2024. DEFENDANTS assigned PLAINTIFF to at DEFENDANTS’
26 communities/residential communities/homes, sites, field locations, facilities and/or other locations
27 in including but not limited to, Rancho, Folsom, Galt, and Elk Grove, California.

28 6. Defendant ELLIOTT HOMES, INC. is an Arizona Corporation that, at all relevant

1 times, was authorized to do business within the State of California and is doing business in the State
2 of California.

3 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
4 communities/residential communities/homes, sites, field locations, facilities and/or other location(s)
5 in California, including but not limited to the communities/residential communities/homes, sites,
6 field locations, facilities and/or other locations in including but not limited to, Rancho, Folsom, Galt,
7 and Elk Grove, California. DEFENDANTS, through its various locations, serve including but not
8 limited to, the construction and/or building and development.

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

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

25 **JOINT LIABILITY**

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

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

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

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

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

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

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

28 15. Thus, DEFENDANTS collectively exercised the right to control the wages, hours

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

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

8 **PAGA ALLEGATIONS**

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

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

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

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

26 19. PLAINTIFF, on August 23, 2024, through counsel, gave written notice by online
27 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
28 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged

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

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

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

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

14 **FACTUAL ALLEGATIONS**

15
16 23. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees,
17 worked for DEFENDANTS in the State of California. At all times referenced herein,
18 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees and suffered and/or
19 permitted them to work.

20 24. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
21 DEFENDANTS as a non-exempt employee with a job title(s) of detailer and/or a similar title(s)
22 and/or job position(s) from in or around February 2020 through in or around February 2024.

23 25. DEFENDANTS assigned PLAINTIFF to work at DEFENDANTS’
24 communities/residential communities/homes, sites, field locations, facilities and/or other locations
25 in including but not limited to, Rancho, Folsom, Galt, and Elk Grove, California. PLAINTIFF
26 regularly worked at least eight (8) hours per day, at least five (5) days per week, at times working
27 more eight (8) and/or ten (10) hours in a workday and/or more than forty (40) hours in a workweek.

28 26. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an

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

2 27. Based on information and belief, DEFENDANTS also compensated Aggrieved
3 Employees with non-discretionary compensation including but not limited to, shift differential pay,
4 non-discretionary bonus/incentive pay and/or other non-discretionary compensation.

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

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

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

22 31. For example, at times PLAINTIFF was required to complete work tasks before
23 clocking in for work and/or after clocking out of work as DEFENDANTS did not want PLAINTIFF
24 to continue working overtime hours. As such, PLAINTIFF was frequently forced to complete his
25 work tasks off-the-clock in order to avoid and/or reduce the number of overtime hours worked.
26 DEFENDANTS knew that the assigned workload would require PLAINTIFF to work well over
27 eight (8) hours however, DEFENDANTS would systemically alter PLAINTIFF's time records
28 and/or require PLAINTIFF to only record scheduled hours worked rather than actual hours to delete

1 portions of PLAINTIFF's total hours worked, including but not limited to, hours worked above eight
2 (8) hours in a day and/or beyond forty hours in a week, thereby failing to compensate PLAINTIFF
3 for all hours worked and the underpayment of minimum wages and overtime wages owed to
4 PLAINTIFF.

5 32. Based on information and belief, DEFENDANTS rounded PLAINTIFF's total hours
6 worked to at least the nearest quarter, half, and/or whole hour during most if not all pay periods
7 during PLAINTIFF's employment, resulting in DEFENDANTS' failure to compensate PLAINTIFF
8 for all hours worked and the underpayment of wages owed to PLAINTIFF. For example,
9 DEFENDANTS' wage statement(s) issued to PLAINTIFF for including but not limited to, the
10 following pay period(s) show DEFENDANTS rounded PLAINTIFF's total hours worked to at least
11 the nearest quarter, half, and/or whole hour during PLAINTIFF's employment, resulting in
12 DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of
13 wages owed to PLAINTIFF: pay period beginning on 12/5/23 and ending on 12/18/23 showing
14 precisely 72.00000 regular hours worked; pay period beginning on 12/19/23 and ending on 1/1/24
15 showing precisely 64.0000 regular hours worked; pay period beginning on 1/2/24 and ending on
16 1/15/24 showing precisely 80.0000 regular hours worked; and pay period beginning on 1/16/24 and
17 ending on 1/29/24 showing exactly 80.0000 regular hours worked.

18 33. Based on information and belief, DEFENDANTS also rounded other Aggrieved
19 Employees' total hours worked to at least the nearest quarter, half and/or whole hour, resulting in
20 DEFENDANTS' failure to compensate those Aggrieved Employees for all hours worked and the
21 underpayment of wages owed to those Aggrieved Employees.

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

28 35. Based on information and belief, Aggrieved Employees were required to complete

1 other off-the-clock work tasks after clocking out for the end of their shifts and/or during
2 uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum
3 and overtime wages owed to Aggrieved Employees. For example, based on information and belief,
4 DEFENDANTS required Aggrieved Employees to clock out for the end of their shifts but to
5 continue working due to the need to return/maintain tools, clean and/or organize their work
6 stations/areas, provide shift status updates and/or debriefings and/or participate in work meetings,
7 respond to work-related communications and/or perform other work tasks off-the-clock, resulting
8 in the underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

9 36. Based on information and belief, DEFENDANTS did not compensate Aggrieved
10 Employees for all time spent donning and doffing personal protective equipment, safety equipment
11 and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses, protective headwear, reflective
12 vests, and/or face masks) during meal periods, before the start of a scheduled shift, and after
13 completing a scheduled shift, resulting in DEFENDANTS' failure to pay Aggrieved Employees for
14 all work time and the underpayment of minimum wages and overtime wages owed to Aggrieved
15 Employees.

16 37. Based on information and belief, Aggrieved Employees were also pressured to
17 complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals
18 and expectations. For example, based on information and belief, Aggrieved Employees were
19 required to complete off-the-clock work outside of scheduled shifts due to including but not limited
20 to, work-related phone calls and/or messages they received to their phones and/or mobile devices
21 and were required to respond to, including but not limited to, communications from supervisors
22 regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to
23 Aggrieved Employees.

24 38. Based on information and belief, DEFENDANTS failed to pay Aggrieved
25 Employees for time they were required to spend completing orientation, policy questionnaires,
26 and/or time spent completing the onboarding process including but not limited to reviewing various
27 documents and policies provided by DEFENDANTS. Based on information and belief, this work
28 time was completed off-the-clock and was not compensated.

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

6 40. For example, as explained herein, based on information and belief, DEFENDANTS
7 rounded Aggrieved Employees' total hours worked to at least the nearest quarter, half and/or whole
8 hour during most if not all pay periods during the relevant period, resulting in DEFENDANTS'
9 failure to compensate those Aggrieved Employees for all hours worked and the underpayment of
10 wages owed to those Aggrieved Employees.

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

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

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

26 44. Based on information and belief, DEFENDANTS failed to incorporate all non-
27 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
28 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),

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

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

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

17 47. For example, PLAINTIFF was sometimes forced to work through his owed first meal
18 period and/or take his meal period late (i.e. after working more than five (5) hours) due to the need
19 to meet work deadlines and/or complete assigned job duties.

20 48. Also, per DEFENDANTS' unlawful meal period policies and practices, PLAINTIFF
21 was afforded a maximum of one meal period per shift even when working shifts lasting longer than
22 ten (10) and/or twelve (12) hours.

23 49. Based on information and belief, DEFENDANTS did not compensate PLAINTIFF
24 with a proper meal period premium for each missed and/or otherwise legally noncompliant meal
25 period.

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

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

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

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

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

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

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

28 57. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an

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

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

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

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

18 **61.** For example, per DEFENDANTS' unlawful rest period policies and practices,
19 DEFENDANTS only permitted PLAINTIFF to take a maximum of two rest periods per shift even
20 when PLAINTIFF worked shifts lasting longer than ten (10) hours. Moreover, at times, PLAINTIFF
21 was required to work through one or more of the maximum provided two (2) rest periods due to the
22 need to complete assigned job duties.

23 **62.** Based on information and belief, DEFENDANTS did not pay Aggrieved Employees
24 any rest period premiums during their respective employments and/or did not pay Aggrieved
25 Employees a proper rest period premium for each missed and/or otherwise legally non-compliant
26 rest period.

27 **63.** For example, DEFENDANTS' wage statements for PLAINTIFF do not show the
28 payment of a single rest period premium during PLAINTIFF's employment despite DEFENDANTS

1 having actual and/or constructive knowledge that PLAINTIFF was required to work through his
2 owed rest periods and/or was not allowed to take legally compliant rest periods, in violation of
3 California rest period law.

4 64. Also, based on information and belief, DEFENDANTS had no policy and/or practice
5 as to the proper timing and/or duty-free nature of rest periods. For example, based on information
6 and belief, DEFENDANTS failed to allow PLAINTIFF and other Aggrieved Employees to take off-
7 duty rest periods that were insofar as practicable in the middle of the work period, as required by
8 law.

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

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

15 67. Based on information and belief, DEFENDANTS implemented policies and/or
16 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
17 DEFENDANTS' control during rest periods.

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

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

28 70. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to

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

8 71. DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees
9 that also failed to indicate the earned gross and net wages earned during the pay period, the correct
10 applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF and
11 Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
12 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
13 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
14 other off-the-clock work policies and practices) which results in a violation of Labor Code section
15 226(a).

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

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

23 74. For example, wage statements issued by DEFENDANTS to PLAINTIFF list the
24 following as the name of the legal entity that is PLAINTIFF's employer: "Movado Retail Outlet."
25 However, based on information and belief, no legal entity by this name exists. Moreover, most, if
26 not all documents contained in DEFENDANTS' personnel file for PLAINTIFF, including without
27 limitation, DEFENDANTS' employment offer letter to PLAINTIFF, DEFENDANTS' Code of
28 Ethics and/or other employment-policy documents and/or employment agreements identify

1 “Movado Group, Inc.” and/or “Movado Group Inc” as the name of the entity that employed
2 PLAINTIFF. As such, DEFENDANTS issued wage statements to Aggrieved Employees that fail
3 to list the correct name of the legal entity that is the employer, in violation of Labor Code section
4 226(a)(8).

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

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

13 77. Upon separation of employment, Aggrieved Employees’ final paychecks were not
14 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
15 Moreover, Aggrieved Employees’ final paychecks, once provided, did not include all wages owed
16 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
17 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
18 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate
19 including non-discretionary compensation, including but not limited to, shift differentials).

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

28 79. These violations subject DEFENDANTS to civil penalties under Labor Code section

1 203, 210, and/or 256.

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

8 81. Based on information and belief, DEFENDANTS shifted the costs of doing business
9 onto Aggrieved Employees by requiring them to pay for business expenses, including but not
10 limited to, uniforms/work clothing/work shoes/personal protective/safety gear and/or the use of
11 Aggrieved Employees' personal vehicles and/or personal cell phones/mobile devices, internet
12 and/or data usage for work-related purposes, including but not limited to, to receive and respond to
13 work-related messages and/or phone calls.

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

18 83. For example, DEFENDANTS required PLAINTIFF to use his personal cell phone /
19 mobile device to carry out PLAINTIFF's assigned job duties, including but not limited to, for
20 sending/making and/or responding to work-related calls and/or messages, however,
21 DEFENDANTS failed to provide PLAINTIFF with any and/or full reimbursement for these
22 business expenses.

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

27 85. Based on information and belief, at times, Aggrieved Employees were not
28 reimbursed for the business use of their personal vehicles, including mileage, wear and tear and/or

1 cost of fuel when they were required to drive around and/or between job sites, and/or otherwise use
2 their personal vehicles in carrying out the duties assigned by DEFENDANTS.

3 86. For example, DEFENDANTS required PLAINTIFF to use PLAINTIFF's personal
4 vehicle to carry out PLAINTIFF's assigned job duties, including without limitation, for driving
5 between job sites as assigned by DEFENDANTS, however, DEFENDANTS failed to reimburse
6 PLAINTIFF at all and/or in full for these business expenses, including without limitation,
7 reimbursement for mileage, wear and tear and/or cost of fuel.

8 87. As such, DEFENDANTS failed to compensate Aggrieved Employees at the legally
9 mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant
10 period.

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

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

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

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

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

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

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

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

20 96. Such a practice is in violation of including but not limited to, Labor Code Sections
21 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

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

27 99. Suitable seating is one of the worker protections covered by California’s Wage
28 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly

1 construed to effectuate the goal of protecting the comfort and welfare of employees. Brinker
2 Restaurant Corp. v. Superior Court, 53 Cal.4th 1004, 1027 (2012).

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

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

11 102. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
12 provides as follows:

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

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

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

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

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

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

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

28 109. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF

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

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

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

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

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

23 Unlawful Agreements.

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

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

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

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

17
18 Unlawful Inquires into Criminal History

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

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

28 119. **Violation of Labor Code Section 432.6.** Based on information and belief,

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

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

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

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

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

17 **Failure to Keep Accurate Records**

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

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

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

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

3 **Meal Period Violations**

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

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

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

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

27 _____
28 ¹ Labor Code § 2699(f)

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

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

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

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

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

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

27 **Rest Period Violations**

28 135. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer

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

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

24 137. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
25 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
26 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
27 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
28 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved

1 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

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

18 **Minimum and Overtime Wage Violations**

19
20 142. California law provides that employees in California must be paid for all hours
21 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
22 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
23 The minimum wage standard applies to each hour employees worked for which they were not paid.
24 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
25 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
26 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

27 143. California law also provides that employees in California must be paid overtime,
28 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per

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

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

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

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

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

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

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

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

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

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

24
25 **Statutory Wage Violations**

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

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

9 **Refusal to Make Payment**

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

18 **Reporting Time Pay Violations.**

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

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

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

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

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

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

14 **Seating Violations**

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

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

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

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

27 163. Moreover, based on information and belief, the nature of the work reasonably
28 permitted the use of seats for at least part of the time that Aggrieved Employees were working.

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

4 **Standard Conditions of Labor Violations**

5 164. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
6 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
7 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
8 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
9 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
10 minimum/overtime wages and other violations described herein result in separate violations of
11 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
12 1197.1 and 2699.

13 **Business Expense Violations**

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

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

28 167. Further, “any contract or agreement, express or implied, made by any employee to

1 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
2 any employee or his personal representative of any right or remedy to which he is entitled to under
3 the laws of this State.” See Cal. Lab. Code section 2804.

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

6 169. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
7 full reimbursement for all reasonable expenses associated with carrying out their duties required
8 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
9 expenses in violation of Labor Code section 2802.

10 170. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
11 Employees have suffered injury in that they were not completely reimbursed as mandated by
12 California law.

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

17 172. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved
18 Employees have suffered injury in that they were not completely reimbursed as mandated by
19 California law.

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

24 **Wage Statement Violations**

25 174. California law requires every employer semi-monthly or at the time of each payment
26 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
27 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
28 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

1 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
2 is paid; (7) the name of the employee and only the last four digits of his or her social security number
3 or an employee identification number other than a social security number; (8) the name and address
4 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

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

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

24 177. As explained above, wage statements issued by DEFENDANTS failed to list the
25 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
26 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
27 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
28 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours

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

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

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

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

13 181. DEFENDANTS' failure to accurately list all hours worked on all wage statements
14 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
15 Employees over whether they received all wages owed to them.

16 182. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
17 they could not easily determine whether they received all wages owed to them and whether they
18 were paid for all hours worked.

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

22 184. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
23 Aggrieved Employees with accurate, itemized wage statements.

24 185. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
25 Employees have suffered injury. The absence of accurate information on their wage statements has
26 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
27 mathematical computations to determine the amount of wages owed, and will cause difficulty and
28 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the

1 submission of inaccurate information about wages and amounts deducted from wages to state and
2 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
3 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
4 and pay records than if DEFENDANT had complied with its legal obligations.

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

8 **Unlawful Deductions**

9 187. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
10 an employee any part of wages theretofore paid by said employer to said employee.” Based on
11 information and belief, DEFENDANTS made unlawful deductions from Aggrieved Employees
12 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
13 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
14 Section 2699.

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

21 **Sick Leave Violations**

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

28 ³ Labor Code § 226.3 (establishing that the civil penalty is \$8 per employee per violation”).

1 compensation into the sick leave pay rate calculation.

2 190. 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.

7 191. 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.

11 192. 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.

15 193. 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.

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

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

23 196. 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**

27 197. 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.

5 198. 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 to Aggrieved Employees upon separation of employment, in violation of California law, including
9 but not limited to, Labor Code section 227.3.

10 **Untimely Payment of Final Wages**

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

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

24 201. Based on information and belief, upon separation of employment, Aggrieved
25 Employees' final paychecks were not timely provided, and/or were not timely provided with all
26 owed vacation pay/ and/or paid time off and/or did not include all wages owed, in violation of Labor
27 Code section 201-202. Based on information and belief, PLAINTIFF's and other Aggrieved
28 Employees' final paychecks did not include all wages owed as they are devoid of, including but not

1 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay and/or all paid
2 time off wages at the properly accrued rates (including but not limited to any owed shift differential
3 pay).

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

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

13 **Violation of Labor Code Section 208**

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

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

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

24 *Unlawful Agreements.*

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

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

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

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

17 Unlawful Inquires into Criminal History

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

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

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

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

4 **Violation of Labor Code Section 432.6**

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

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

12 214. Labor Code Section 432.6(b) provides in pertinent part:

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

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

22 217. Under the provisions of PAGA and the above mentioned Labor Code sections,
23 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
24 226.7, 227.3, 245-248.6, 256, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
25 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
26 interpretations of these laws by California Courts and administrative bodies, as well as any other
27 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

28 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the

relevant California Labor Code provisions listed herein only if permitted by the PAGA statute,
pursuant to Labor Code section 2699(a); and

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

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

PRAYER FOR RELIEF

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

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

Dated: November 15, 2024

CROSNER LEGAL, PC

By: _____


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CONNOR ANGEL