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13 on behalf of the State of California and all Aggrieved Employees

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

16 SAMANTHA VILLALOBOS, on behalf of
17 the State of California and all Aggrieved
18 Employees,

19 Plaintiff,

20 v.

21 PJ CENTRAL, a California Corporation; and
22 DOES 1-100, inclusive,

23 Defendants.

Case No.: **24STCV27265**

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

1 Plaintiff, SAMANTHA VILLALOBOS, (“PLAINTIFF”), on behalf of the State of
2 California and all Aggrieved Employees (as defined below), hereby files this Complaint against
3 Defendants PJ CENTRAL, a California Corporation; and DOES 1-100, inclusive, (collectively
4 referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges
5 as follows:

6 **INTRODUCTION**

7 1. This is a representative action filed by PLAINTIFF on behalf of all Aggrieved
8 Employees and the State of California against DEFENDANTS, pursuant to California’s Private
9 Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties (75%
10 payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
11 Employees) for DEFENDANTS’ violations of the California Labor Code as alleged below.

12 **JURISDICTION AND VENUE**

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

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

22 **THE PARTIES**

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

25 5. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
26 title(s) of delivery driver and/or a similar title(s) and/or job position(s) from in or around January
27 2024 through in or around August 2024. PLAINTIFF worked for DEFENDANTS at
28 DEFENDANTS’ location(s) in Lancaster, California.

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

7. DEFENDANTS own, operate, manage and/or staff its employees to work at the restaurants, stores and/or other location(s) in California, including but not limited to the restaurants, stores, facilities and/or other locations in including but not limited to, Los Angeles County, California. DEFENDANTS, through its various locations, serve the restaurant and/or food services industry. DEFENDANTS operate under including but not limited to, the name(s) “Papa Johns” and/or “Papa John’s” and/or “Papa Johns Pizza”.

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

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

JOINT LIABILITY

10. Under California law, the definition of the terms “to employ” are broadly construed

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

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

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

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

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

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

1 collectively would evaluate the wage rates of PLAINTIFF and Aggrieved Employees.

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

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

10 **PAGA ALLEGATIONS**

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

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

19 18. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
20 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
21 limitations period and suffered one or more of the Labor Code violations set forth herein.
22 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
23 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
24 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
25 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by
26 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
27 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
28 committed by the employer – regardless of whether Plaintiff experienced all violations personally.

1 *Id.* at 760-761.

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

3 19. PLAINTIFF, on August 9, 2024, through counsel, gave written notice by online
4 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
5 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
6 in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via
7 certified mail.

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

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

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

19 **FACTUAL ALLEGATIONS**

20
21 23. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
22 title(s) of delivery driver and/or a similar title(s) and/or job position(s) from in or around January
23 2024 through in or around August 2024. PLAINTIFF worked for DEFENDANTS at
24 DEFENDANTS’ location(s) in Lancaster, California. PLAINTIFF regularly worked at least
25 approximately four (4) to six and one-half hours (6 ½) per day, at times working more than eight
26 (8) hours in a day and/or more than forty (40) hours in a week.

27 24. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
28 DEFENDANTS as hours worked. Based on information and belief, at times, DEFENDANTS

1 compensated PLAINTIFF with piece-rate compensation and/or other non-discretionary
2 compensation. PLAINTIFF also earned tips.

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

5 26. **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 27. 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 28. Based on information and belief, Aggrieved Employees were not paid for all hours
19 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
20 worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

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

28 30. 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/their assigned vehicles, clean and/or
6 organize their work stations/areas/assigned vehicles, provide shift status updates and/or debriefings
7 and/or participate in work meetings, respond to work-related communications and/or perform other
8 work tasks off-the-clock, resulting in the underpayment of minimum wages and overtime wages
9 owed to Aggrieved Employees.

10 31. Based on information and belief, DEFENDANTS did not compensate Aggrieved
11 Employees for time spent donning and doffing personal protective equipment and/or uniforms (e.g.,
12 rubber gloves, hairnets, aprons, hats, and/or face masks) during meal periods, before the start of a
13 scheduled shift, and/or after completing a scheduled shift, resulting in the underpayment of wages
14 owed to Aggrieved Employees.

15 32. Based on information and belief, at times, Aggrieved Employees were required to
16 complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or
17 messages they received to their phones/mobile devices and were required to respond to, including
18 but not limited to, communications from supervisors regarding scheduling and/or other work tasks,
19 resulting in the underpayment of wages owed to Aggrieved Employees.

20 33. PLAINTIFF and other Aggrieved Employees were required to perform other off-the-
21 clock work for which they were not compensated. For example, based on information and belief,
22 at times, DEFENDANTS' biometric/electronic employee time-keeping system malfunctioned such
23 that Aggrieved Employees were required to either reinitiate and/or otherwise troubleshoot the
24 system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts
25 and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of
26 wages owed to Aggrieved Employees. Based on information and belief, Aggrieved Employees
27 experienced the same issues when clocking out for shifts and/or back in for meal periods. This time
28 spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid

1 minimum wages owed to Aggrieved Employees.

2 34. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
3 Employees for all time spent completing DEFENDANTS' required trainings and/or courses (e.g.,
4 food safety and/or food handler courses) and/or testings and/or certifications (e.g., food handler
5 certifications).

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

26 36. Based on information and belief, DEFENDANTS failed to pay Aggrieved
27 Employees for time they were required to spend completing orientation, policy questionnaires,
28 and/or time spent completing the onboarding process including but not limited to reviewing various

1 documents and policies provided by DEFENDANTS. Based on information and belief, this work
2 time was completed off-the-clock and was not compensated.

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

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

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

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

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

28 42. Based on further information and belief, DEFENDANTS implemented a time-

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

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

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

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

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

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

1 48. For example, based on information and belief, PLAINTIFF and other Aggrieved
2 Employees earned non-discretionary piece-rate compensation, shift differential pay, non-
3 discretionary bonuses/incentive pay and/or other non-discretionary compensation during pay
4 periods in which they worked overtime, yet DEFENDANTS failed to incorporate all non-
5 discretionary compensation into the regular rate(s) used to calculate the owed overtime rate(s),
6 resulting in the miscalculation and underpayment of overtime wages owed to Aggrieved Employees.

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

16 50. For example, based on information and belief, at times, Aggrieved Employees were
17 forced to skip their owed meal periods completely, take late meal periods in order to complete
18 assigned job duties and/or were interrupted during purported meal periods and/or had meal periods
19 cut short and/or restricted to DEFENDANTS' premises and/or were otherwise required to remain
20 on-duty during unpaid meal periods due to the need to continue assigned job duties.

21 51. For example, when PLAINTIFF worked shifts lasting longer than five and one-half
22 hours, PLAINTIFF typically, if not always, did not receive any version of a meal period.

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

28 53. Based on information and belief, DEFENDANTS implemented policies and/or
13
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GENERAL ACT

1 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
2 during unpaid meal periods.

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

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

13 56. Moreover, per DEFENDANTS' uniform policy and practice, Aggrieved Employees
14 who worked shifts of more than ten hours did not receive a second legally compliant thirty (30)
15 minute second meal period. For example, when PLAINTIFF worked more than ten (10) and/or
16 twelve (12} hours in a shift, PLAINTIFF was typically, if not always, denied a second legally
17 compliant meal period.

18 57. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
19 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
20 information and belief, DEFENDANTS did not have a written meal period policy, nor did
21 DEFENDANTS have any sort of compliant policy in practice.

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

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

1 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
2 were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
3 violation of California's meal period laws.

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

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

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

19 63. Based on information and belief, DEFENDANTS did not have a have a compliant
20 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
21 practice.

22 64. For example, based on information and belief, Aggrieved Employees were frequently
23 if not always unable to take compliant rest periods due to their need to complete assigned job duties
24 and/or was unable to take a net ten-minute rest period in a suitable rest area and/or had purported
25 rest periods restricted to DEFENDANTS' premises.

26 65. For example, during PLAINTIFF's employment, PLAINTIFF was rarely, if ever,
27 able to take a compliant rest period due to the need to complete assigned job duties and/or was
28 unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods

1 restricted to DEFENDANTS' premises.

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

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

8 68. Based on information and belief, DEFENDANTS implemented policies and/or
9 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
10 DEFENDANTS' control during rest periods.

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

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

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

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

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

13 74. Based on information and belief, wage statements issued by DEFENDANTS failed
14 to list all applicable hourly rates in effect during the pay period and the corresponding number of
15 hours worked at each hourly rate by the employee, in violation of including but not limited to, Labor
16 Code section 226(a)(9). For example, based on information and belief, DEFENDANTS failed to
17 incorporate all non-discretionary compensation into the regular rate(s) of pay for purposes of
18 calculating the owed overtime rate, resulting in the miscalculation of the owed overtime rate and
19 DEFENDANTS' failure to list all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the Aggrieved Employee on wage
21 statements issued by DEFENDANTS to Aggrieved Employees, in violation of including but not
22 limited to, Labor Code Section 226(a)(9).

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

26 76. For example, DEFENDANTS regularly failed to reimburse PLAINTIFF for business
27 expenses, including but not limited to, cell phone/data usage and/or vehicle usage/cost of fuel,
28 mileage and/or vehicle wear and tear, incurred by PLAINTIFF each pay period, thereby deducting

1 business costs from PLAINTIFF's earned wages each pay period, in violation of including but not
2 limited to, Labor Code Section 221, and further failing to itemize these deductions for business
3 costs, on PLAINTIFF's wage statements.

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

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

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

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

21 81. Based on information and belief, DEFENDANTS shifted the costs of doing business
22 onto PLAINTIFF and other Aggrieved Employees requiring them to pay for business expenses,
23 including but not limited to, uniforms/work clothing/work shoes/personal protective/safety gear
24 and/or personal vehicle expenses and/or the use of Aggrieved Employees' personal cell
25 phones/mobile devices, internet and/or data usage for work-related purposes, including but not
26 limited to, to receive and respond to work-related messages and/or phone calls.

27 82. For example, DEFENDANTS required PLAINTIFF to use PLAINTIFF's personal
28 cell phone/mobile device to carry out her assigned job duties, including but not limited to, to make

1 and/or respond to work-related communications, including but not limited to, work-related calls
2 and/or messages to/from DEFENDANTS' employees as well as to use her personal cell phone /
3 mobile device for navigational purposes during her shifts/deliveries, however, DEFENDANTS
4 failed to reimburse PLAINTIFF at all and/or in full for the business expenses PLAINTIFF incurred
5 in connection therewith, including but not limited to, increased data plan charges.

6 83. Based on information and belief, DEFENDANTS failed to reimburse Aggrieved
7 Employees for expenses associated with having to purchase and/or maintain their own
8 uniforms/work clothing/work shoes/personal protective/safety gear and/or hand tools and/or
9 equipment and/or use of personal cell phone/mobile device required to perform their assigned job
10 duties.

11 84. As explained above, based on information and belief, DEFENDANTS did not
12 reimburse Aggrieved Employees for the cost of using their personal phones / mobile devices for
13 work-related purposes and/or the cost of purchasing and/or maintaining work uniforms/work
14 clothing/work shoes, personal protective/safety gear and/or the costs associated with being required
15 to use their personal vehicles to carry out the job duties assigned to them by DEFENDANTS.

16 85. For example, DEFENDANTS required PLAINTIFF to use her personal vehicle to
17 carry out her assigned job duties, including but not limited to, to make DEFENDANTS' deliveries,
18 however, DEFENDANTS failed to provide PLAINTIFF with any and/or full reimbursement for all
19 business expenses incurred in connection with being required to use her personal vehicle for work,
20 including but not limited to, cost of fuel, mileage and wear and tear on the vehicle. For example,
21 DEFENDANTS required PLAINTIFF to use her personal vehicle to make DEFENDANTS'
22 deliveries. However, DEFENDANTS either failed to provide PLAINTIFF with any reimbursement
23 and/or DEFENDANTS only provided PLAINTIFF with a flat rate of approximately \$2.05 per
24 delivery completed regardless of the number of miles PLAINTIFF drove for DEFENDANTS using
25 her personal vehicle. As such, DEFENDANTS failed to reimburse PLAINTIFF at the legally
26 mandated Internal Revenue Service (IRS) mileage reimbursement rate in effect during the relevant
27 period.

28 86. Based on information and belief, DEFENDANTS regularly failed to reimburse and
19
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
2 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
3 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
4 assigned by DEFENDANTS.

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

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

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

17 90. For example, based on information and belief, upon PLAINTIFF's separation of
18 employment in or around August 2024, PLAINTIFF's final paycheck was not timely provided, was
19 not timely provided with all owed vacation pay/paid time off and/or did not include all wages owed
20 as PLAINTIFF's final paycheck was devoid of, including but not limited to, all owed minimum
21 wages, overtime wages, premium wages, vacation pay and/or paid time off wages at the properly
22 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate
23 including non-discretionary compensation, including but not limited to, any owed shift
24 differentials).

25 91. As such, DEFENDANTS violated Labor Code sections 201 and/or 202, subjecting
26 DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256.

27 92. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
28 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow

1 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
2 failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of
3 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

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

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

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

18 **96.** For example, DEFENDANTS regularly failed to reimburse PLAINTIFF for business
19 expenses, including but not limited to, cell phone/data usage and/or vehicle usage, by PLAINTIFF
20 each pay period, thereby deducting business costs from PLAINTIFF’s earned wages each pay
21 period, in violation of including but not limited to, Labor Code Section 221, and further failing to
22 itemize these deductions for business costs, on PLAINTIFF’s wage statements, in violation of Labor
23 Code section 226(a)(4).

24 **97.** Such a practice is in violation of including but not limited to, Labor Code Sections
25 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

26 **98. Inaccurate Records.** Based on the above-described unlawful policies and practices,
27 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
28 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.

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

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

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

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

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

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

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

16 105. **Violation of Labor Code section 351 and 353.** Labor Code Section 351 prohibits
17 employers and their agents from sharing in or keeping any portion of a gratuity left for or given to
18 one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions
19 from gratuities, or from using gratuities as direct or indirect credits against an employee's
20 wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities
21 received.

22 106. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
23 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
24 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
25 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
26 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
27 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
28 Aggrieved Employees by the next regular payday following the credit card payment, in violation of

1 Labor Code section 351.

2 107. Based on information and belief, DEFENDANTS charges an additional service
3 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
4 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
5 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
6 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
7 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
8 constitute a gratuity that is intended to the employees providing the service).

9 108. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
10 provides as follows:

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

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

24 111. Based on information and belief, DEFENDANTS have a policy and practice of
25 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
26 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
27 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
28 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

1 **112. Unlawful Agreements-Unlawful Criminal History Inquiries.**

2 Unlawful Agreements.

3
4 113. Labor Code section 432.5 provides that “no employer...shall require any employee
5 or applicant for employment to agree, in writing, to any term or condition which is known by such
6 employer...to be prohibited by law.” Based on information and belief, DEFENDANTS required
7 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not
8 limited to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or
9 nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful
10 meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements
11 and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
12 employment in violation of Labor Code section 432.5.

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

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

24 Unlawful Inquires into Criminal History

25
26 116. Labor Code section 432.7 prohibits an employer from asking applicants about past
27 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
28

1 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
2 convictions on its employment application, in violation of California law.

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

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

15 119. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
16 engaged in these same herein described unlawful practices, which led to violations of the California
17 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
18 unlawful practices to all of its employees that it applied to PLAINTIFF.

19 **FIRST CAUSE OF ACTION**
20 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
21 **2698, *ET SEQ.***
22 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
23 **Defendants)**

24 120. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

25 **Failure to Keep Accurate Records**

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

122. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate

1 and complete records as required by law, including but not limited to the following records: total
2 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
3 Aggrieved Employees began and ended each work period, time records of meal periods, and
4 accurate itemized wage statements.

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

11 **Meal Period Violations**

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

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

20 126. Employers covered by any and all applicable IWC Wage Orders have an obligation
21 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
22 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
23 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
24 ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing

25 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period");
26 ;Labor Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which
27 the employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
2 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
3 provided”).

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

11 128. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
12 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
13 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
14 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
15 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
16 periods completely.

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

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

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

27 132. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
28 periods in violation of California law and/or failed to pay the proper meal period premium for failure

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

4 133. These unlawful meal period policies and practices result in violations of Labor Code
5 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
6 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
7 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
8 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

9 **Rest Period Violations**

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

24 135. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
25 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
26 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
27 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
28 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,

1 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
2 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
3 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
4 “onus is on the employer to clearly communicate the authorization and permission [to take rest
5 periods] to its employees.”).

6 136. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
7 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
8 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
9 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
10 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
11 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

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

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

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

25 140. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
26 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
27 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

1 **Minimum and Overtime Wage Violations**

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

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

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

22 144. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
23 Aggrieved Employees for all hours worked.

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

1 Employees.

2 146. Based on information and belief, DEFENDANTS calculated the owed overtime
3 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
4 based on the minimum wage established for the cities and/or counties within which Aggrieved
5 Employees worked, resulting in the miscalculation and underpayment of overtime wages owed to
6 Aggrieved Employees who worked in cities and/or counties in California with minimum wage rates
7 above the California minimum wage rate.

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

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

15 149. Based on information and belief, DEFENDANTS further violated California's
16 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
17 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
18 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
19 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
20 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
21 other Aggrieved Employees.

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

26 **Statutory Wage Violations**

27 151. California Labor Code section 223 makes it unlawful for an employer to secretly pay
28 wages lower than required by statute while purporting to pay legal wages. As described above,

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

10 **Refusal to Make Payment**

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

19 **Standard Conditions of Labor Violations**

20 153. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
21 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
22 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
23 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
24 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
25 minimum/overtime wages and other violations described herein result in separate violations of
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 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
2 1197.1 and 2699.

3 **Business Expense Violations**

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

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

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

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

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

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

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

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

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

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

14 **Wage Statement Violations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **Unlawful Deductions**

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

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

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

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

12 **Reporting Time Pay Violations**

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

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

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

27 181. Based on information and belief, DEFENDANTS have a policy and practice of
28 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,

1 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
2 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
3 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

4 **Sick Leave Violations**

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

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

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

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

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

1 wages.

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

3 188. On information and belief, PLAINTIFF alleges that all of these practices were
4 experienced and continue to be experienced by other Aggrieved Employees.

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

8 **Violation of Labor Code section 351 and 353**

9 190. Labor Code Section 351 prohibits employers and their agents from sharing in or
10 keeping any portion of a gratuity left for or given to one or more employees by a patron.
11 Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using
12 gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353
13 mandates employers to keep accurate records of all gratuities received.

14 191. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
15 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
16 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
17 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
18 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
19 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
20 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
21 Labor Code section 351.

22 192. Based on information and belief, DEFENDANTS charges an additional service
23 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
24 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
25 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
26 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
27 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
28 constitute a gratuity that is intended to the employees providing the service).

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

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

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

13 **Untimely Payment of Final Wages**

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

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

27 197. Based on information and belief, upon separation of employment, Aggrieved
28 Employees' final paychecks were not timely provided, were not timely provided with all owed

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

5 198. As a result, DEFENDANTS violated Labor Code sections 201 and/or 202 and 203.
6 These violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210,
7 and/or 256.

8 **Violation of Labor Code Section 208**

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

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

18 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

19 *Unlawful Agreements.*

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

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

9 203. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
10 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
11 432.5.

12 Unlawful Inquires into Criminal History

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

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

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

27 **Violation of Labor Code Section 432.6**

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

1 sign meal period waivers that were universally signed as a condition of employment, including but
2 not limited to, during the onboarding process. Further, these invalid waivers are otherwise unlawful
3 under Labor Code section 432.6.

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

7 209. Labor Code Section 432.6(b) provides in pertinent part:

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

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

17 212. Under the provisions of PAGA and the above mentioned Labor Code sections,
18 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
19 226.7, 227.3, 245-248.6, 256, 351, 353, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5,
20 1194, 1197, 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well
21 as all interpretations of these laws by California Courts and administrative bodies, as well as any
22 other law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

213. 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 (75% payable to the LWDA and 25% payable to Aggrieved Employees);
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: October 17, 2024

CROSNER LEGAL, PC

By:

Zuk

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