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on behalf of the State of California and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

VALERIE WALL, on behalf of the State of
California and all Aggrieved Employees,

Plaintiff,

v.

USAA INSURANCE AGENCY, INC. OF
TEXAS, a Texas Corporation; and DOES 1-
100, inclusive,

Defendants.

Case No.: **CVRI 2500017**

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

1 Plaintiff, VALERIE WALL, (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants USAA
3 INSURANCE AGENCY, INC. OF TEXAS, a Texas Corporation; and DOES 1-100, inclusive,
4 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
5 thereon alleges as follows:

6 **INTRODUCTION**

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

11 **JURISDICTION AND VENUE**

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

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

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 non-exempt account manager and/or a similar title(s) and/or job position(s) from in or
27 around September 2023 through in or around July 2024. DEFENDANTS assigned PLAINTIFF to
28 work primarily on a remote basis, from PLAINTIFF’s home, located in Riverside County,

1 California.

2 6. Defendant, USAA INSURANCE AGENCY, INC. OF TEXAS, is a Texas
3 Corporation that, at all relevant times, was authorized to do business within the State of California
4 and is doing business in the State of California. Defendant, USAA INSURANCE AGENCY, INC.
5 OF TEXAS, does business as including but not limited to the following: “USAA Insurance
6 Agency,” “United Services Automobile Association,” and/or “USAA.”

7 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
8 offices, home/remote offices, facilities and/or other location(s) in California, including but not
9 limited to, the offices, home/remote offices, facilities and/or other locations in including but not
10 limited to, Riverside County, California, among other cities in California. DEFENDANTS, through
11 its various locations, serve the consumer goods and services industry.¹

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

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

28

¹ See <https://www.usaa.com/>. Last visited on January 2, 2025.

1 **JOINT LIABILITY**

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

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

26 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
27 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
28 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices

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

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

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

1 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
2 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
3 collectively would evaluate the wage rates of PLAINTIFF and Aggrieved Employees.

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

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

12 **PAGA ALLEGATIONS**

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

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

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

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

2 19. PLAINTIFF, on October 18, 2024, through counsel, gave written notice by online
3 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
4 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
5 in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via
6 certified mail.

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

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

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

18 **FACTUAL ALLEGATIONS**

19 23. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
20 title(s) of non-exempt account manager and/or a similar title(s) and/or job position(s) from in or
21 around September 2023 through in or around July 2024.

22 24. PLAINTIFF regularly worked at least approximately eight (8) to ten (10) hours per
23 day, at times working more than ten (10) and/or twelve (12) hours in a workday. DEFENDANTS
24 assigned PLAINTIFF to work primarily on a remote basis, from PLAINTIFF’s home, located in
25 Riverside County, California.

26 25. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
27 DEFENDANTS as hours worked.

28 26. Based on information and belief, at times, PLAINTIFF and other Aggrieved
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1 Employees were also compensated with non-discretionary compensation, including but not limited
2 to, bonus/incentive pay and/or other non-discretionary compensation.

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

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

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

19 30. For example, DEFENDANTS issued wage statements to Aggrieved Employees that
20 demonstrate DEFENDANTS rounded Aggrieved Employees' total hours worked to at least the
21 nearest quarter, half and/or whole hour during many if not all pay periods during their employments,
22 resulting in DEFENDANTS' failure to compensate Aggrieved Employees for all hours worked and
23 the underpayment of wages owed to Aggrieved Employees.

24 31. For example, DEFENDANTS' wage statements for PLAINTIFF for including but
25 not limited to the following pay periods show DEFENDANTS rounded PLAINTIFF's total hours
26 worked to at least the nearest quarter, half and/or whole hour, resulting in DEFENDANTS' failure
27 to compensate PLAINTIFF for all hours worked and the underpayment of wages owed to
28 PLAINTIFF: pay period beginning on September 10, 2023 and ending on September 23, 2023,

1 showing exactly 80.00 total hours worked; pay period beginning on December 3, 2023 and ending
2 on December 16, 2023 and showing precisely 72.25 total hours worked; pay period beginning on
3 March 24, 2024 and ending on April 6, 2024 showing precisely 57.00 total hours worked; pay period
4 beginning on April 7, 2024 and ending on April 20, 2024 showing exactly 66.00 total hours worked;
5 and pay period beginning on June 16, 2024 and ending on June 29, 2024 showing precisely 80.00
6 total hours worked. Based on information and belief, DEFENDANTS rounded PLAINTIFF's total
7 hours worked during many, if not all pay periods, during PLAINTIFF's employment, resulting in
8 DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of
9 wages owed to PLAINTIFF.

10 32. Based on information and belief, DEFENDANTS' time/pay records for PLAINTIFF
11 and other Aggrieved Employees consistently show the same precise shift start time and same precise
12 shift end times and/or show shift start and end times that are rounded to at least the nearest quarter
13 hour.

14 33. Based on information and belief, DEFENDANTS unlawfully edited time records to
15 reflect scheduled shift start and end times rather than actual hours worked and/or instructed
16 PLAINTIFF and other Aggrieved Employees to record their scheduled shift start time and end times
17 and/or to round their recorded hours worked regardless of when PLAINTIFF and other Aggrieved
18 Employees actually started and stopped working on those days, which resulted in off-the-clock work
19 and the underpayment of wages owed to PLAINTIFF and other Aggrieved Employees.

20 34. For example, based on information and belief, DEFENDANTS did not provide any
21 mechanism for/instruct PLAINTIFF and other Aggrieved Employees to record on a daily basis their
22 actual shift start and end times and DEFENDANTS did not record PLAINTIFF and other Aggrieved
23 Employees true shift start and end times. Rather, DEFENDANTS instructed PLAINTIFF and other
24 Aggrieved Employees to record/input at the end of each week that they started working at precisely
25 their scheduled shift start times and stopped working each day at precisely their scheduled shift end
26 time(s) and/or to round/shave time off their recorded total hours, which did not account for pre-shift
27 and/or post-shift off-the-clock work, which was unrecorded and uncompensated.

28 35. For example, based on information and belief, Aggrieved Employees were required
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1 to complete off-the-clock work outside of scheduled shifts due to including but not limited to, work-
2 related phone calls and/or messages they received to their phones and/or mobile devices and were
3 required to respond to, including but not limited to, communications from supervisors regarding
4 scheduling and/or other work tasks, resulting in the underpayment of wages owed to Aggrieved
5 Employees. For example, DEFENDANTS required PLAINTIFF to complete off-the-clock work
6 tasks prior to clocking in/signing in for the start of PLAINTIFF's shifts, resulting in consistent pre-
7 shift off-the-clock work and the underpayment of wages owed to PLAINTIFF. For example,
8 PLAINTIFF was required to listen to work-related voicemails, respond to work-related emails
9 and/or complete other off-the-clock work tasks prior to clocking for the start of PLAINTIFF's shifts
10 on many, if not all days, PLAINTIFF worked for DEFENDANTS, resulting in consistent pre-shift
11 off-the-clock work and the underpayment of wages owed to PLAINTIFF.

12 36. PLAINTIFF was pressured to complete additional work tasks off-the-clock in order
13 to meet DEFENDANTS' goals and expectations. As an example, DEFENDANTS required
14 PLAINTIFF to respond to work-related phone calls and/or messages PLAINTIFF received to
15 PLAINTIFF's phone(s) and/or personal device(s), including but not limited to, communications
16 after hours from supervisors regarding DEFENDANTS' customers' accounts and/or other work
17 tasks, outside of PLAINTIFF's scheduled shift times, including but not limited to, on PLAINTIFF's
18 days purported days off, resulting in consistent off-the-clock work, DEFENDANTS' failure to
19 compensate PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF.

20 37. Based on information and belief, DEFENDANTS also required other Aggrieved
21 Employees to complete off-the-clock work outside of scheduled shifts due to including but not
22 limited to, work-related phone calls and/or messages they received to their phone(s) and/or personal
23 device(s), including but not limited to, communications from supervisors regarding scheduling
24 and/or other work tasks, resulting in DEFENDANTS' failure to compensate Aggrieved Employees
25 for all hours worked and the underpayment of wages owed to Aggrieved Employees.

26 38. Based on information and belief, DEFENDANTS failed to pay Aggrieved
27 Employees for time they were required to spend completing orientation, policy questionnaires, time
28 spent completing the onboarding process and/or time spent reviewing various documents and

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

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

12 40. For example, as described herein, DEFENDANTS issued wage statements to
13 Aggrieved Employees that demonstrate DEFENDANTS rounded Aggrieved Employees' total hours
14 worked to at least the nearest quarter, half and/or whole hour during many if not all pay periods
15 during their employments, resulting in DEFENDANTS' failure to compensate Aggrieved
16 Employees for all hours worked and the underpayment of wages owed to Aggrieved Employees.

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

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

1 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation
2 of California's minimum and overtime wage laws.

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

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

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

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

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

26 48. Based on information and belief, DEFENDANTS calculated the owed overtime
27 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
28 based on the minimum wage established for the cities and/or counties within which Aggrieved

1 Employees worked, resulting in the miscalculation and underpayment of overtime wages owed to
2 Aggrieved Employees who worked in cities and/or counties in California with minimum wage rates
3 above the California minimum wage rate.

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

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

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

19 52. For example, based on information and belief, at times, PLAINTIFF and other
20 Aggrieved Employees were forced to skip their first meal periods completely in order to complete
21 assigned job duties, take interrupted, late/shortened meal periods and/or remain on-duty during
22 unpaid meal periods due to the need to complete assigned job duties. For example, DEFENDANTS'
23 time records for PLAINTIFF reflect a clock out for a meal period at the fifth hour or later, on
24 including but not limited to the following dates: December 18, 2023, December 21, 2023, January
25 9, 2024, January 11, 2024, and January 17, 2024.

26 53. Also, based on information and belief, DEFENDANTS required Aggrieved
27 Employees to complete off-the-clock work prior to their scheduled shift times which
28 DEFENDANTS failed to take into account when scheduling meal periods for Aggrieved

1 Employees. Based on information and belief, meal periods were late, in part due to unaccounted
2 pre-shift off-the-clock work.

3 54. For example, as described herein, PLAINTIFF was consistently required to complete
4 pre-shift off-the-clock work each workday, including but not limited to, listening to work-related
5 voicemail messages, responding to work-related emails and/or completing other off-the-clock work
6 tasks, which DEFENDANTS failed to take into account when scheduling meal periods for
7 PLAINTIFF, resulting in PLAINTIFF receiving late meal periods, in violation of California meal
8 period law.

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

14 56. As explained herein, based on information and belief, DEFENDANTS implemented
15 policies and/or practices that failed to relieve Aggrieved Employees of all duties and
16 DEFENDANTS' control during unpaid meal periods.

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

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

26 59. For example, per DEFENDANTS' unlawful meal period policies and practices,
27 PLAINTIFF was typically not afforded any second thirty-minute meal period when PLAINTIFF
28 worked shifts lasting longer than ten (10) and/or twelve (12) hours.

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

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

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

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

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

26 65. PLAINTIFF and other Aggrieved Employees were not adequately informed,
27 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
28 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to

1 the taking of duty-free rest periods.

2 66. Based on information and belief, DEFENDANTS did not have a have a compliant
3 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
4 practice.

5 67. For example, based on information and belief, PLAINTIFF and other Aggrieved
6 Employees were sometimes if not often required to work through part or all of their owed rest
7 periods each shift and/or were unable to take timely rest periods due to the need to continue assigned
8 job duties. For example, at times, PLAINTIFF had to work through part or all of one or more of
9 her owed rest periods each shift due to the need to continue completing assigned job duties,
10 including but not limited to, completing work-related calls with DEFENDANTS' clients and/or
11 other work tasks.

12 68. Also, per DEFENDANTS unlawful rest period policies and practices, PLAINTIFF
13 was not afforded any version of a third rest period when PLAINTIFF worked shifts lasting more
14 than ten (10) hours, in violation of California rest period law.

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

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

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

24 72. Moreover, based on information and belief, DEFENDANTS failed to provide any
25 form of a third rest period and/or a legally noncompliant rest period on shifts lasting longer than ten
26 hours.

27 73. For example, as explained above, in violation of California rest period law, it was
28 DEFENDANTS' policy and practice to provide a maximum of two (2) rest periods per shift even

1 when Aggrieved Employees worked shifts lasting longer than ten (10) hours. For example, when
2 PLAINTIFF worked shifts lasting longer than ten (10) hours, PLAINTIFF was not provided with
3 any version of a third rest period.

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

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

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

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

28 78. DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees

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

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

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

16 81. For example, based on information and belief, DEFENDANTS issued wage
17 statements to PLAINTIFF and other Aggrieved Employees – including but not limited to,
18 DEFENDANTS’ wage statements for PLAINTIFF for pay period beginning on March 24, 2024 and
19 ending on April 6, 2024 and for pay period beginning on December 3, 2023 and ending on December
20 16, 2023 – that do not provide an accurate overtime rate because instead of multiplying the regular
21 rate of pay by one and one-half, the wage statements either fail to provide an accurate overtime rate
22 of pay that incorporates all non-discretionary remuneration and/or the wage statements provide at
23 least two (2) separate overtime rate categories with each provide corresponding rates that are either
24 the same as the base and/or list a rate that is half the base rate of pay and/or otherwise fail to list the
25 accurate overtime rate of pay, in violation of Labor Code section 226(a)(9).

26 82. Based on information and belief, DEFENDANTS issued wage statements to
27 Aggrieved Employees that fail to accurately list all deductions, in violation of Labor Code section
28 226(a)(4).

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

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

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

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

18 87. For example, wage statements issued by DEFENDANTS to PLAINTIFF identify
19 "USAA Insurance Agency" as the name of the legal entity that employed PLAINTIFF, however,
20 based on information and belief, a legal entity by this name does not exist in California.

21 88. Moreover, PLAINTIFF's personnel file includes a notice pursuant to California
22 Labor Code Section 2810.5 that identifies "United Services Automobile Association" as the legal
23 name of PLAINTIFF's employer, however, this entity is not identified as such on wage statements
24 issued to PLAINTIFF.

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

28 90. **Unreimbursed Business Expenses.** Based on information and belief,
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

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

6 91. Based on information and belief, DEFENDANTS shifted the costs of doing business
7 onto PLAINTIFF and other Aggrieved Employees requiring them to pay for business expenses,
8 including but not limited to, hand tools/equipment, the use of Aggrieved Employees' personal
9 vehicles and/or personal cell phones/mobile devices, internet and/or data usage for work-related
10 purposes, including but not limited to, to receive and respond to work-related messages and/or phone
11 calls.

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

16 93. For example, DEFENDANTS regularly required PLAINTIFF use PLAINTIFF's
17 personal cell phone / mobile device to carry out PLAINTIFF's assigned job duties, including without
18 limitation, for receiving and responding to work-related calls and/or messages from supervisors
19 and/or other employees regarding DEFENDANTS' customer accounts, scheduling and/or other
20 work tasks, but PLAINTIFF was not reimbursed by DEFENDANTS at all and/or in full for these
21 business expenses.

22 94. Based on information and belief, Aggrieved Employees were not reimbursed for the
23 cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform
24 their assigned job duties and/or for the costs of purchasing and/or maintaining work
25 uniforms/clothing/shoes and/or protective gear.

26 95. For example, DEFENDANTS required PLAINTIFF to purchase and/or maintain her
27 own work tools/equipment, including without limitation, pens, writing utensils, paper and/or other
28 office/work supplies required to carry out PLAINTIFF's assigned job duties, however,

1 DEFENDANTS did not provide PLAINTIFF with any and/or full reimbursement for these business
2 expenses.

3 96. Based on information and belief, DEFENDANTS required PLAINTIFF and other
4 Aggrieved Employees to work remotely, including but not limited to, from their homes. As a result
5 of working from home, PLAINTIFF and other Aggrieved Employees were required to use their
6 home internet, electricity, and other utilities in the discharge of their job duties. Based on
7 information and belief, DEFENDANTS lacked and continue to lack a policy to reimburse
8 employees who regularly increased utility expenses as a result of working from home. Aggrieved
9 Employees' increased utility and internet expenses were expenses for which DEFENDANTS were
10 required to reimburse Aggrieved Employees a reasonable percentage based on their required
11 business use because said expenses were necessarily incurred by PLAINTIFF and other Aggrieved
12 Employees as a direct consequence of the discharge of their duties of employment. However,
13 DEFENDANTS failed to reimburse PLAINTIFF, other Aggrieved Employees at all and/or in full
14 for these business expenses incurred as a result of being required to work from their homes, in
15 violation of California law.

16 97. For example, during PLAINTIFF's employment, DEFENDANTS assigned
17 PLAINTIFF to work on a remote basis, from PLAINTIFF's home. PLAINTIFF necessarily
18 incurred business expenses as a result of being required to carry out her assigned job duties from
19 her home, including without limitation, internet/utility expenses, data plan charges and/or other
20 business expenses. However, DEFENDANTS failed to provide PLAINTIFF with any and/or full
21 reimbursement for PLAINTIFF's home internet expenses and/or utility expenses incurred as a result
22 of being required to perform PLAINTIFF's job duties remotely from PLAINTIFF's home.

23 98. As explained above, based on information and belief, Aggrieved Employees were
24 not reimbursed for vehicle expenses and/or personal phone(s)/personal device(s) for work-related
25 purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work
26 shoes, personal protective/safety gear.

27 99. Based on information and belief, DEFENDANTS regularly failed to reimburse and
28 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section

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

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

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

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

20 103. For example, when DEFENDANTS terminated PLAINTIFF's employment in or
21 around July 2024, PLAINTIFF's final paycheck was not timely provided and/or did not include all
22 wages owed as it was devoid of, including but not limited to, allowed minimum wages, overtime
23 wages, premium wages, vacation pay and/or paid time off wages at the properly accrued rates
24 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-
25 discretionary compensation, including but not limited to, any owed shift differentials). As such,
26 DEFENDANTS are in violation of Labor Code section 201 and/or Labor Code section 202 as to
27 PLAINTIFF.

28 104. Based on further information and belief, DEFENDANTS failed to timely provide all

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

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

13 **106.** 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 **107. Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
19 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
20 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
21 failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation
22 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
23 limited to, any owed shift differentials) to Aggrieved Employees upon separation of employment,
24 in violation of California law, including but not limited to, Labor Code section 227.3.

25 **108. Unlawful Deductions.** Labor Code section 221 prohibits an employer from
26 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
27 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
28 from Aggrieved Employees paychecks during the relevant period including, without limitation,

1 deducting wages for purported overpayments from previous pay periods and/or business costs from
2 Aggrieved Employees' earned wages.

3 109. For example, as explained herein, DEFENDANTS regularly failed to reimburse
4 Aggrieved Employees for business expenses incurred by Aggrieved Employees each pay period,
5 thereby deducting business costs from Aggrieved Employees' earned wages each pay period, in
6 violation of including but not limited to, Labor Code Section 221, and further failing to itemize these
7 deductions for business costs, on PLAINTIFF's wage statements, in violation of Labor Code section
8 226(a)(4).

9 110. Based on information and belief, DEFENDANTS also made unlawful deductions
10 from Aggrieved Employees earned wages for purported overpayments from previous pay periods.
11 For example, DEFENDANTS' issued wage statement(s) for PLAINTIFF for including but not
12 limited to the following pay periods show DEFENDANTS unlawfully deducted wages for purported
13 overpayments from previous pay periods, which DEFENDANTS itemized as negative "Retro"
14 Earnings: pay period beginning on July 27, 2023 and ending on August 9, 2023 showing "Retro"
15 Earnings of -\$131.19, which DEFENDANTS unlawfully deducted from PLAINTIFF's earned
16 wages as a purported overpayments from previous pay periods. Such a practice is in violation of
17 including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil
18 penalties under Labor Code Section 2699.

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

27 112. DEFENDANTS have failed and continue to fail to keep accurate and complete
28 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal

1 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
2 employer control during unpaid meal periods, failure to record the true start and end times of meal
3 periods, shift start times and shift end times, and other off-the-clock work policies and practices
4 described herein.

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

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

22 115. Based on information and belief, throughout the relevant time period,
23 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
24 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave.

25 116. 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.

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

6 118. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

7 Unlawful Agreements.

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

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

26 121. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
27 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
28 432.5.

1 Unlawful Inquires into Criminal History

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

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

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

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

22 **FIRST CAUSE OF ACTION**
23 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
24 **2698, *ET SEQ.***
25 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
26 **Defendants)**

27 126. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

28 **Failure to Keep Accurate Records**

 127. California Labor Code § 1174 requires employers to keep “accurate and complete”
payroll records showing, among other things, the hours worked daily by all non-exempt employees.

1 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
2 times during which all owed meal periods were provided each day.

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

8 129. DEFENDANTS' failure to keep "accurate and complete" payroll records for
9 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
10 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
11 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
12 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
13 period during which the referenced statutes and Wage Order provisions were violated.²

14 **Meal Period Violations**

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

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

23 132. Employers covered by any and all applicable IWC Wage Orders have an obligation
24 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
25 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
26 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)

27 _____
28 ² Labor Code § 2699(f)

1 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
2 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
3 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
4 provided”).

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

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

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

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

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

28 138. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal

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

5 139. These unlawful meal period policies and practices result in violations of Labor Code
6 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
7 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
8 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
9 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

10 **Rest Period Violations**

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

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

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

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

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

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

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

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

1 **Minimum and Overtime Wage Violations**

2 147. 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.

9 148. 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.*

15 149. 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.

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

24 151. 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.

2 152. 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.

8 153. 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.

11 154. 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.

15 155. 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.

22 156. Based on information and belief, at times, Aggrieved Employees that were subject
23 to an AWS, were sent home early and/or worked less hours than those that were scheduled under
24 the AWS. On such shortened shifts, Aggrieved Employees were entitled to overtime pay at 1.5 times
25 the regular rate of pay after the first eight hours of work. Instead, DEFENDANTS paid Aggrieved
26 Employees their base rate for all hours worked on the shortened shift(s) in violation of the alternative
27 workweek schedule, and in violation of California Labor Code section 510, the applicable Wage
28 Order, and Labor Code section 1198. As such, Aggrieved Employees that were subject to an AWS

1 were also deprived of all owed overtime wages when required to work shortened shifts.

2 157. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
3 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
4 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
5 Wage Orders, section 20.

6 **Statutory Wage Violations**

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

18
19 **Refusal to Make Payment**

20 159. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
21 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
22 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
23 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
24 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
25 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
26 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
27
28

1 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

2 **Standard Conditions of Labor Violations**

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

11 **Business Expense Violations**

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

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

26
27 ³ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

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

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

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

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

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

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

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

25 **Wage Statement Violations**

26 170. California law requires every employer semi-monthly or at the time of each payment
27 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
28 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of

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

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

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

25 173. As explained above, wage statements issued by DEFENDANTS failed to list the
26 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
27 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
28 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices

described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

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

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

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

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

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

181. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved Employees have suffered injury. The absence of accurate information on their wage statements has prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and mathematical computations to determine the amount of wages owed, and will cause difficulty and

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

6 182. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
7 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
8 during which the statute provisions were violated. ⁴

9 **Violation of Labor Code Section 208**

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

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

19
20 **Failure to Pay Vested Vacation/Paid Time Off**

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

27 186. Based on information and belief, DEFENDANTS had and continue to have a

28 ⁴ Labor Code § 226.3 (establishing that the civil penalty is ~~30~~per employee per violation”).

1 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
2 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
3 at the properly accrued rates (including but not limited to any owed shift differential pay) to
4 Aggrieved Employees upon separation of employment, in violation of California law, including but
5 not limited to, Labor Code section 227.3.

6 **Untimely Payment of Final Wages**

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

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

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

27 190. Based on information and belief, at times, Aggrieved Employees experienced breaks
28 in employment caused by DEFENDANTS whereby Aggrieved Employees would not be called in

1 for work for longer than a single pay period due to including but not limited to DEFENDANTS’
2 lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet,
3 DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in
4 violation of including but not limited to Labor Code section 201-202.

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

8 **Unlawful Deductions**

9 192. Labor Code section 221 prohibits an employer from “collect[ing] or receiv[ing] from
10 an employee any part of wages theretofore paid by said employer to said employee.” Based on
11 information and belief, DEFENDANTS made unlawful deductions from Aggrieved Employees
12 paychecks during the relevant period, including without limitation, deducting business costs from
13 Aggrieved Employees’ earned wages/paychecks. Such a practice is in violation of including but not
14 limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under
15 Labor Code Section 2699.

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

22 **Sick Leave Violations**

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

1 compensation into the sick leave pay rate calculation.

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

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

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

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

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

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

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

26 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

27 *Unlawful Agreements.*

28 202. Labor Code section 432.5 provides that “no employer...shall require any employee

1 or applicant for employment to agree, in writing, to any term or condition which is known by such
2 employer...to be prohibited by law.” Based on information and belief, DEFENDANTS required
3 Aggrieved Employees to agree in writing to unlawful conditions of employment including but not
4 limited to, unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or
5 nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful
6 meal period waivers, unlawful commissions agreements, unlawful forum selection clauses and/or
7 choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition
8 of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

17 204. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
18 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
19 432.5.

20 Unlawful Inquires into Criminal History

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

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

1 application in violation of California law.

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

7 **Violation of Labor Code Section 432.6**

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

12 209. Labor Code Section 432.6(a) provides: "[A] person shall not, as a condition of
13 employment, continued employment, or the receipt of any employment-related benefit, require any
14 applicant for employment or any employee to waive any right..."

15 210. Labor Code Section 432.6(b) provides in pertinent part:

16 211. "An employer shall not threaten, retaliate, or discriminate against, or terminate any
17 applicant for employment or any employee because of the refusal to the waiver of any right..."

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

25 213. Under the provisions of PAGA and the above mentioned Labor Code sections,
26 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
27 226.7, 227.3, 245-248.6, 256, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
28 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all

1 interpretations of these laws by California Courts and administrative bodies, as well as any other
2 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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

11 **PRAYER FOR RELIEF**

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

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

20 Dated: January 6, 2025

CROSNER LEGAL, PC

21
22 By: 

23 Jamie K. Serb, Esq.
24 Brandon Brouillette, Esq.
25 Zachary M. Crosner, Esq.
26 Attorneys for Plaintiff
27 VALERIE WALL
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