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on behalf of the State of California and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JUAN ORTIZ, on behalf of the State of
California and all Aggrieved Employees,

Plaintiff,

v.

NEWELL BRANDS INC., a Delaware
Corporation; NEWELL BRANDS
DISTRIBUTION LLC, a Delaware Limited
Liability Company; JOBANDTALENT
HIRINGS LLC, a Georgia Limited Liability
Company; LGS EMPLOYEE SOLUTIONS,
LP, a Georgia Limited Partnership; and
DOES 1-100, inclusive,

Defendants.

Case No.: CIVVS2501671

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

1 Plaintiff, JUAN ORTIZ, (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants NEWELL
3 BRANDS INC., a Delaware Corporation; NEWELL BRANDS DISTRIBUTION LLC, a Delaware
4 Limited Liability Company; JOBANDTALENT HIRINGS LLC, a Georgia Limited Liability
5 Company; LGS EMPLOYEE SOLUTIONS, LP, a Georgia Limited Partnership; and DOES 1-100,
6 inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and
7 believes and thereon alleges as follows:

8 **INTRODUCTION**

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

13 **JURISDICTION AND VENUE**

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

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

24 **THE PARTIES**

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

27 5. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
28 title(s) of forklift operator and/or a similar title(s) and/or job position(s) from in or around the

1 beginning of 2024 through in or around June 2024 and from in or around September 2024 and
2 continuing through the present. PLAINTIFF was staffed by LGS Staffing to work including but not
3 limited to for, Defendant NEWELL BRANDS INC.'s and/or Defendant NEWELL BRANDS
4 DISTRIBUTION LLC's facilities located in Victorville, California.

5 6. Defendant NEWELL BRANDS INC. is a Delaware Corporation that, at all relevant
6 times, was authorized to do business within the State of California and is doing business in the State
7 of California.

8 7. Defendant NEWELL BRANDS DISTRIBUTION LLC is a Delaware Limited
9 Liability Company that, at all relevant times, was authorized to do business within the State of
10 California and is doing business in the State of California.

11 8. Defendant NEWELL BRANDS INC. and Defendant NEWELL BRANDS
12 DISTRIBUTION LLC are collectively referred to herein as "Newell Brands."

13 9. Newell Brands operates business under multiple brand names, including without
14 limitation, "Rubbermaid."

15 10. Defendant JOBANDTALENT HIRINGS LLC, is a Georgia Limited Liability
16 Company that, at all relevant times, was authorized to do business within the State of California and
17 is doing business in the State of California.

18 11. Defendant LGS EMPLOYEE SOLUTIONS, LP is a Georgia Limited Partnership
19 that, at all relevant times, was authorized to do business within the State of California and is doing
20 business in the State of California.

21 12. Defendant JOBANDTALENT HIRINGS LLC and Defendant LGS EMPLOYEE
22 SOLUTIONS, LP (hereinafter collectively referred to as "LGS Staffing") operate a staffing
23 business.

24 13. DEFENDANTS own, operate, manage and/or staff its employees to work at the
25 warehouse distribution centers, warehouses, facilities and/or other location(s) in California,
26 including but not limited to, the warehouse distribution centers, warehouses, facilities and/or other
27 locations in including but not limited to, San Bernardino County, California. DEFENDANTS,
28 through its various locations, serve including but not limited to, the manufacturing and/or

1 distribution industry.

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

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

18 **JOINT LIABILITY**

19 16. Under California law, the definition of the terms “to employ” are broadly construed
20 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
21 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
22 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
23 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
24 was to reach situations in which multiple entities control different aspects of the employment
25 relationship. Supervision of the work, in the specific sense of exercising control over how services
26 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
27 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
28 temporary employment agency) hires and pays a worker, and the other entity supervises the work.

1 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
2 California, applying a less stringent standard to what constitutes sufficient control by a business
3 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
4 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
5 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
6 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
7 employment,” *Id.* at 875 [emphasis added].

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

15 18. PLAINTIFF is informed and believes and thereon alleges that at all relevant times
16 Defendant LGS Staffing operated as a single integrated enterprise with common ownership and
17 centralized human resources. As a result, Defendant LGS Staffing utilized the same unlawful
18 policies and practices across all of their locations/facilities and subjected all of the Aggrieved
19 Employees to these same policies and practices regardless of the location(s) where they worked.
20 Among other things, PLAINTIFF is informed and believes that: (1) there is common ownership in,
21 and financial control, in Defendant LGS Staffing’s companies, (2) Defendant LGS Staffing utilize
22 common management, who have control over the day-to-day operations and employment matters,
23 including the power to hire and fire, set schedules, issue employee policies, and determine rates of
24 compensation across its locations in California; (3) Defendant LGS Staffing utilize the same policies
25 and procedures for all California employees, including issuing the same employee handbooks and
26 other form agreements; (4) Defendant LGS Staffing use at least some of the same Human Resources
27 personnel and attorneys to oversee employment matters; and, (6) Defendant LGS Staffing share
28 employees.

1 19. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
2 to this Complaint, DEFENDANTS, and each of them, were the joint employers of PLAINTIFF and
3 Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and cause of action,
4 in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved
5 Employees' wages, hours and working conditions, and/or suffered or permitted them to work so as
6 to be considered the joint employers of PLAINTIFF and Aggrieved Employees.

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

21 21. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
22 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
23 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
24 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
25 PLAINTIFF seeks relief in this Complaint.

26 22. Moreover, based on information and belief, LGS Staffing hired PLAINTIFF and
27 entered into a written employment agreement with PLAINTIFF. During PLAINTIFF's employment,
28 LGS Staffing maintained control over many aspects of PLAINTIFF's employment, including,

1 among other things, having the authority to discipline PLAINTIFF, change PLAINTIFF's job
2 assignment, change PLAINTIFF's work hours, change PLAINTIFF's rates of pay, and to terminate
3 PLAINTIFF's employment.

4 23. Based on information and belief, when PLAINTIFF was first hired, LGS Staffing
5 provided PLAINTIFF with orientation and training materials. LGS Staffing issued PLAINTIFF
6 written policies concerning meal periods, rest breaks, timekeeping, hours worked, and payment of
7 PLAINTIFF's wages, with which PLAINTIFF was required to comply. Based on information and
8 belief, among other things, these policies provided that PLAINTIFF's weekly time records be
9 submitted to LGS Staffing, and LGS Staffing was supposed to process PLAINTIFF's time records
10 and pay PLAINTIFF for all hours worked. LGS Staffing exercised ultimate control over the payment
11 of PLAINTIFF's wages, as LGS Staffing issued PLAINTIFF his paychecks. Finally, LGS Staffing
12 directed PLAINTIFF to comply with Newell Brands' policies and directions. PLAINTIFF is
13 informed and believes that LGS Staffing exercised the same control over, applied the same policies
14 and practices, and engaged in the same acts and omissions with regard to the other Aggrieved
15 Employees.

16 24. Newell Brands ("Newell Brands") similarly suffered or permitted PLAINTIFF to
17 work for them or engaged PLAINTIFF to work for them. PLAINTIFF is informed and believes that
18 Newell Brands entered into a written agreement with LGS Staffing, pursuant to which Newell
19 Brands paid LGS Staffing to provide it with workers, including PLAINTIFF, to conduct Newell
20 Brands' business operations – namely, to work in Newell Brands' warehouse distribution centers,
21 warehouses and/or other facilities and/or other location(s). Newell Brands suffered or permitted
22 PLAINTIFF to work at Newell Brands for the entirety of PLAINTIFF's employment.

23 25. Newell Brands further exercised control over PLAINTIFF's wages, hours and
24 working conditions. Newell Brands also: (1) set PLAINTIFF's work hours and provided his work
25 schedule; (2) provided PLAINTIFF with policies regarding meal periods and rest breaks, with which
26 PLAINTIFF was required to comply; (3) directly supervised PLAINTIFF's work through its
27 employees; (4) assigned PLAINTIFF's job duties and trained PLAINTIFF on said job duties; (5)
28 exercised authority to reprimand and counsel PLAINTIFF regarding any issues, including work

1 performance; (6) exercised authority to end PLAINTIFF's work assignment at any time, the effective
2 termination of employment; (7) required PLAINTIFF to record hours worked using Newell Brands'
3 timekeeping system; (8) determined whether and when PLAINTIFF would receive meal periods
4 and rest breaks; (9) subjected PLAINTIFF to unlawfully scheduled meal periods and rest breaks;
5 and, (10) was responsible for maintaining PLAINTIFF's timekeeping records. On information and
6 belief, Newell Brands issued further written policies and practices and guidelines governing
7 PLAINTIFF's working conditions with which PLAINTIFF was required to comply.

8 26. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
9 control over, applied the same policies and practices, and engaged in the same acts and omissions
10 with regard to all other Aggrieved Employees.

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

17 28. By reason of their status as joint employers of PLAINTIFF and Aggrieved
18 Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor
19 Code and applicable Wage Orders as to all Aggrieved Employees.

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

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

1 31. By reason of their status as joint employers of PLAINTIFF and Aggrieved
2 Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor
3 Code and applicable Wage Orders as to all Aggrieved Employees.

4 **LIABILITY UNDER CALIFORNIA LABOR CODE SECTION 2810.3**

5 32. California Labor Code section 2810.3(b)(1) provides in pertinent part that “a client
6 employer shall share with the labor contractor” all civil liability for the payment of wages to the
7 workers supplied by the labor contractor.

8 33. LGS Staffing is a “labor contractor” in that it supplies Newell Brands with workers
9 to perform labor within Newell Brands’ usual course of business. Lab. Code § 2810.3(a)(3).

10 34. Defendant NEWELL BRANDS INC. and/or Defendant NEWELL BRANDS
11 DISTRIBUTION LLC is a “client employer” in that it is a business entity that “obtains or is provided
12 workers to perform labor within its usual course of business” from labor contractor LGS Staffing.
13 Lab. Code § 2810.3(a)(1)(A). Moreover, Defendant NEWELL BRANDS INC. and/or Defendant
14 NEWELL BRANDS DISTRIBUTION LLC has a workforce of more than twenty-five workers and
15 is supplied with at least five (5) workers from a labor contractor at any given time. Lab. Code §
16 2810.3(a)(1)(B).

17 35. Under Section 2810.3, DEFENDANTS thus share all civil liability for the payment
18 of wages to all workers supplied to Defendant NEWELL BRANDS INC. and/or Defendant
19 NEWELL BRANDS DISTRIBUTION LLC by LGS Staffing.

20 36. PLAINTIFF complied with all administrative requirements by providing notice by
21 certified mail of the claims alleged herein to Newell Brands. Lab. Code § 2810.3(d).

22 37. Any reference herein to any alleged act or omission by any DEFENDANT shall be
23 deemed also to mean the same alleged act or omission by every other DEFENDANT, acting jointly
24 and severally.

25 **PAGA ALLEGATIONS**

26 38. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
27 of the State of California and all Aggrieved Employees, regarding violations of the California Labor
28 Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include the

1 following:

- 2 i. All non-exempt workers who were directly employed by Defendant
3 JOBANDTALENT HIRINGS LLC and/or Defendant LGS EMPLOYEE
4 SOLUTIONS, LP - regardless of where those non-exempt workers were assigned
5 or a staffed to work – in California at any time from one year plus 65 days from
6 the filing of the initial Complaint through the present (“PAGA Period”).
- 7 ii. All non-exempt workers who were assigned/staffed to work at any one or more
8 of Defendant NEWELL BRANDS INC.’s and/or Defendant NEWELL
9 BRANDS DISTRIBUTION LLC’s location(s) in California, by Defendant
10 JOBANDTALENT HIRINGS LLC and/or Defendant LGS EMPLOYEE
11 SOLUTIONS, LP and/or any other staffing/temporary service agencies, at any
12 time during the PAGA Period.
- 13 iii. All non-exempt workers who were directly employed by Defendant NEWELL
14 BRANDS INC. and/or Defendant NEWELL BRANDS DISTRIBUTION LLC
15 at any location in California at any time during the PAGA Period.

16 39. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
17 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
18 limitations period and personally suffered each of the Labor Code violations set forth herein.
19 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
20 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

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

22 40. PLAINTIFF, on October 11, 2024, through counsel, gave written notice by online
23 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
24 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
25 in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via
26 certified mail.

27 41. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
28 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved

1 Employees.

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

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

10 **FACTUAL ALLEGATIONS**

11 44. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees,
12 worked for DEFENDANTS in the State of California. At all times referenced herein,
13 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees and suffered and/or
14 permitted them to work.

15 45. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
16 title(s) of forklift operator and/or a similar title(s) and/or job position(s) from in or around the
17 beginning of 2024 through in or around June 2024 and from in or around September 2024 and
18 continuing through the present.

19 46. PLAINTIFF was staffed by LGS Staffing to work including but not limited to, for
20 Newell Brands' facilities located in Victorville, California. PLAINTIFF regularly worked at least
21 approximately seven and one-half (7 ½) to eleven (11) hours per day, at least six (6) days per week
22 DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours
23 worked.

24 47. Based on information and belief, at times, Aggrieved Employees were also
25 compensated with non-discretionary compensation, including but not limited to, shift differential
26 pay, bonus/incentive pay and/or other non-discretionary compensation.

27 48. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
28 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of

1 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
2 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
3 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
4 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
5 below.

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

12 50. Based on information and belief, Aggrieved Employees were not paid for all hours
13 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
14 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
15 the clock work policies and/or practices.

16 51. For example, DEFENDANTS required PLAINTIFF to complete off-the-clock work
17 tasks prior to clocking in for the start of PLAINTIFF's shifts, after clocking out for the end of
18 PLAINTIFF's shifts, during unpaid meal periods and/or otherwise outside of scheduled shift times,
19 resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the
20 underpayment of wages owed to PLAINTIFF.

21 52. For example, as explained above, based on information and belief, DEFENDANTS
22 would unlawfully edit the clock in and out times for PLAINTIFF's and other Aggrieved Employees'
23 meal periods in order to display at least a thirty minute off-duty meal period during most if not all
24 shifts worked and/or required PLAINTIFF and other Aggrieved Employees to record a timely off-
25 duty, thirty-minute meal period during most if not all shifts worked, notwithstanding the fact that
26 DEFENDANTS had actual and/or constructive knowledge that DEFENDANTS had required
27 PLAINTIFF and other Aggrieved Employees' to perform work-related tasks during their meal
28 periods.

1 53. Also, PLAINTIFF was required to complete pre-shift off-the-clock work and/or
2 during unpaid meal periods resulting in DEFENDANTS' failure to compensate PLAINTIFF for all
3 hours worked and the underpayment of wages owed to PLAINTIFF.

4 54. For example, based on information and belief, PLAINTIFF and other Aggrieved
5 Employees were required to spend time under DEFENDANTS' control which was not recorded and
6 not compensated, including but not limited to, time spent traveling to DEFENDANTS' timekeeping
7 terminals, standing in line behind other employees to access DEFENDANTS' time-keeping system
8 and/or time spent reinitiating DEFENDANTS' time-keeping system before they could clock in for
9 the start of their shifts and/or after completing a purported meal period.

10 55. For example, PLAINTIFF was typically required to spend at least two (2) to three
11 (3) minutes traveling to and/or waiting in line behind other employees to access DEFENDANTS'
12 timekeeping system terminal before PLAINTIFF could then clock in for the start of PLAINTIFF's
13 shift each day, which said time spent under DEFENDANTS' control was not recorded nor
14 compensated resulting in DEFENDANTS' consistent failure to compensate PLAINTIFF for all
15 hours worked and the underpayment of wages owed to PLAINTIFF.

16 56. Based on information and belief, DEFENDANTS failed to pay AGGRIEVED
17 EMPLOYEES for time they were required to spend completing orientation, policy questionnaires,
18 and/or time spent completing the onboarding process including but not limited to reviewing various
19 documents and policies provided by DEFENDANTS. Based on information and belief, this work
20 time was completed off-the-clock and was not compensated. For example, based on information and
21 belief, DEFENDANTS required AGGRIEVED EMPLOYEES to review and sign various types of
22 policies and documents, including but not limited to, safety guidelines/safety awareness
23 certifications, among other documents, but they were not paid for all time spent reviewing and/or
24 completing certification as directed by DEFENDANTS.

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

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

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

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

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

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

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

1 to PLAINTIFF and other Aggrieved Employees.

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

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

17 66. For example, DEFENDANTS failed to authorize and permit timely, off-duty meal
18 periods that were a full thirty-minutes in length. For example, when PLAINTIFF received a meal
19 period during his shifts, while DEFENDANTS purported to allow a full thirty-minute meal period,
20 DEFENDANTS actually limited PLAINTIFF to meal periods that were only approximately twenty-
21 five (25) minutes long or less, due to DEFENDANTS' policy that PLAINTIFF be back at
22 PLAINTIFF's workstation within thirty minutes of leaving as this policy only relieved PLAINTIFF
23 from his workstation for no more than approximately twenty-five minutes as PLAINTIFF was
24 required to travel to and from DEFENDANTS' timeclock terminal and/or rest area/break room and
25 be back at the workstation by the end of this thirty minutes. As such, PLAINTIFF was consistently
26 suffered, permitted and/or required to take shortened and/or on-duty meal periods, resulting in
27 consistently denied meal periods as well as DEFENDANTS' failure to compensate PLAINTIFF for
28 all hours worked and the underpayment of wages owed to PLAINTIFF.

1 67. Based on information and belief, DEFENDANTS would unlawfully edit the clock in
2 and out times for PLAINTIFF's and other Aggrieved Employees' meal periods in order to display
3 at least a thirty minute, timely, off-duty meal period during most if not all shifts worked and/or
4 would require PLAINTIFF and other Aggrieved Employees to record at least a thirty minute, timely,
5 off-duty meal period during most if not all shifts worked, notwithstanding the fact that
6 DEFENDANTS had actual and/or constructive knowledge that DEFENDANTS had required
7 PLAINTIFF and other Aggrieved Employees' to perform work-related tasks/remain under
8 DEFENDANTS' control during part or all of their meal periods.

9 68. Moreover, per DEFENDANTS unlawful meal period policies and practices,
10 DEFENDANTS allowed PLAINTIFF to take a maximum of a single meal period per shift even
11 when PLAINTIFF worked shifts lasting longer than ten (10) and/or twelve (12) hours.

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

17 70. Based on information and belief, DEFENDANTS implemented policies and/or
18 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
19 during unpaid meal periods.

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

24 72. Based on information and belief, despite DEFENDANTS' failure to provide lawful
25 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
26 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
27 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
28 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved

1 Employees did not receive lawful meal periods.

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

4 74. For example, as explained herein, when PLAINTIFF worked shifts lasting longer
5 than ten (10) and/or twelve (12) hours, PLAINTIFF was not afforded a second legally compliant
6 meal period.

7 75. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
8 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
9 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
10 did DEFENDANTS have any sort of compliant policy in practice.

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

17 77. Based on information and belief, DEFENDANTS had actual and/or constructive
18 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods
19 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
20 violation of California's meal period laws.

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

28 79. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide

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

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

8 81. Based on information and belief, DEFENDANTS did not have a have a compliant
9 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
10 practice.

11 82. For example, based on information and belief, Aggrieved Employees were frequently
12 if not always unable to take compliant rest periods due to their need to complete assigned job duties
13 and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported
14 rest periods restricted to DEFENDANTS' premises/their assigned work locations/workstations.

15 83. For example, PLAINTIFF was frequently if not always unable to take compliant rest
16 periods because PLAINTIFF was unable to take a net ten-minute rest period in a suitable rest area
17 and/or had purported rest periods restricted to DEFENDANTS' premises/PLAINTIFF's assigned
18 workstation(s) for part or all of his rest period(s) each shift.

19 84. Also, per DEFENDANTS' unlawful rest period policies and practices,
20 DEFENDANTS allowed PLAINTIFF to take a maximum of two (2) rest periods per shift. For
21 example, PLAINTIFF often worked more than ten (10) hours in a shift but was not allowed to take
22 any version of a third rest period during those shifts and one or more of his first two rest (2) periods
23 during those shifts were typically non-compliant (e.g., cut short and/or on duty).

24 85. Based on information and belief, DEFENDANTS failed to authorize net ten-minute,
25 off-duty, rest periods that were insofar as practicable in the middle of the work period as required
26 under California rest period law.

27 86. Based on information and belief, DEFENDANTS did not have a lawful policy,
28 instruction, or practice as to the taking, timing, or duty-free nature of rest periods. For example,

1 based on information and belief, DEFENDANTS failed to authorize and permit rest periods that
2 were a “net” ten minutes in a suitable rest area, and instead, to the extent rest periods were provided,
3 DEFENDANTS limited PLAINTIFF and other Aggrieved Employees to only ten-minute rest
4 periods, requiring them to be back at their workstations within ten minutes of leaving their work
5 stations , in violation of California rest period law.

6 87. Based on information and belief, DEFENDANTS did not pay PLAINTIFF any rest
7 period premiums during PLAINTIFF’s employment despite DEFENDANTS having actual and/or
8 constructive knowledge that PLAINTIFF was at times and/or typically not relieved of all duties and
9 DEFENDANTS’ control during purported rest periods, in violation of California rest period law.

10 88. Based on information and belief, any purported rest periods were interrupted, cut
11 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of
12 their job duties, and/or commentary from supervisors pressuring them to skip rest periods
13 completely and/or take non-compliant rest periods.

14 89. Moreover, based on information and belief, DEFENDANTS failed to provide
15 Aggrieved Employees with any form of a third rest period on shifts lasting longer than ten (10)
16 hours.

17 90. For example, DEFENDANTS failed to provide PLAINTIFF with any form of a third
18 rest period on shifts lasting longer than ten (10) hours.

19 91. Based on information and belief, DEFENDANTS implemented policies and/or
20 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
21 DEFENDANTS’ control during rest periods.

22 92. For example, based on information and belief, Aggrieved Employees were restricted
23 to the worksite premises and/or were required to monitor work communication devices and/or
24 respond to work communications during purportedly off-duty rest periods, and as such, were not
25 relieved of all duties and DEFENDANTS’ control during any rest periods, in violation of California
26 rest period law.

27 93. Based on information and belief, Aggrieved Employees were pressured to complete
28 their work duties according to a designated schedule such that rest periods were only taken once

1 tasks were completed, and/or as time permitted.

2 94. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
3 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
4 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
5 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
6 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
7 shift differential pay, and/or other non-discretionary compensation into the regular rate of
8 compensation for purposes of calculating the owed rest period premium.

9 95. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
10 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
11 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
12 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
13 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
14 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
15 applicable hourly rates in effect during the pay period and the corresponding number of hours
16 worked at each hourly rate by the employee.

17 96. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
18 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
19 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
20 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
21 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
22 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
23 other off-the-clock work policies and practices described above) which results in a violation of
24 Labor Code section 226(a).

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

28 98. For example, as described herein, DEFENDANTS regularly failed to reimburse

1 PLAINTIFF for business expenses thereby deducting business costs from PLAINTIFF's earned
2 wages each pay period, in violation of including but not limited to, Labor Code Section 221, and
3 further failing to itemize these deductions for business costs, on PLAINTIFF's wage statements. As
4 such, DEFENDANTS issued wage statements to PLAINTIFF that failed to accurately list all
5 deductions, in violation of Labor Code section 226(a)(4).

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

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

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

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

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

23 104. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
24 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
25 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
26 from Aggrieved Employees paychecks during the relevant period including without limitation,
27 deducting business costs, including without limitation, expenses/costs for data usage/ the cost of cell
28 phone use/other business expenses as described herein.

1 105. For example, DEFENDANTS regularly failed to reimburse PLAINTIFF for business
2 expenses thereby deducting business costs from PLAINTIFF's earned wages each pay period, in
3 violation of including but not limited to, Labor Code Section 221

4 106. Such a practice is in violation of including but not limited to, Labor Code Sections
5 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

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

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

20 109. By failing to record the true start and end times of PLAINTIFF's and other Aggrieved
21 Employees' shifts and the true start and end times of PLAINTIFF's and other Aggrieved
22 Employees' meal periods, DEFENDANTS failed to keep accurate records and issue accurate wage
23 statements.

24 110. **Unreimbursed Business Expenses.** Based on information and belief,
25 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
26 as a direct consequence of the performance of their job duties without providing reimbursement, in
27 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
28 Aggrieved Employees were improperly required to provide and maintain work tools that are

1 supposed to be the responsibility of the employer.

2 111. Based on information and belief, DEFENDANTS shifted the costs of doing business
3 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
4 to, the use of Aggrieved Employees' personal cell phones/mobile devices, internet and/or data usage
5 for work related purposes, including but not limited to, to download and regularly use work-related
6 applications (e.g., employee timekeeping application(s)) and/or to send and/or receive and respond
7 to work-related messages and/or phone calls.

8 112. For example, based on information and belief, Aggrieved Employees were required
9 to receive and respond to work-related calls and/or messages from including but not limited to
10 supervisors and/or other Aggrieved Employees regarding scheduling and/or other work tasks and/or
11 were required to download and regularly use work-related application(s) on their personal cell
12 phone(s)/mobile device(s) but were not reimbursed by DEFENDANTS at all and/or in full for these
13 business expenses.

14 113. For example, DEFENDANTS required PLAINTIFF to use PLAINTIFF's personal
15 cell phone / mobile device to carry out PLAINTIFF's assigned job duties. For example, at times
16 during the relevant period, DEFENDANTS required PLAINTIFF to use PLAINTIFF's personal cell
17 phone(s)/mobile device(s) for including but not limited to, downloading and regularly using work-
18 related application(s) (e.g., employee timekeeping application(s)) to clock in and out for
19 PLAINTIFF's shifts and for clocking in and out for meal periods. However, DEFENDANTS failed
20 to provide PLAINTIFF with any and/or full reimbursement for these business expenses PLAINTIFF
21 incurred in connection with being required to use PLAINTIFF's personal cell phone / personal
22 device(s) to carry out PLAINTIFF's assigned job duties, including but not limited to, increased data
23 plan charges.

24 114. Based on information and belief, Aggrieved Employees were improperly required to
25 pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

26 115. Based on information and belief, DEFENDANTS regularly failed to reimburse and
27 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
28 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable

1 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
2 assigned by DEFENDANTS.

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

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

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

24 119. Based on information and belief, throughout the relevant time period,
25 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
26 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
27 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
28 prior to their respective separations, for as on several occasions thereafter, he or she would have

1 been entitled to use the banked sick leave and earn appropriate compensation.

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

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

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

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

23 124. Based on information and belief, DEFENDANTS failed to timely provide all owed
24 wages immediately upon discharge of employment. Based on information and belief, at times,
25 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
26 Aggrieved Employees would not be called in for work for longer than a single pay period due to
27 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
28 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at

1 the end of such periods of employment, in violation of including but not limited to Labor Code
2 section 201-202.

3 125. **Unlawful Agreements.**

4 Unlawful Agreements.

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

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

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

25 129. **Violation of Labor Code Section 432.6.** Based on information and belief,
26 DEFENDANTS require/required Aggrieved Employees to waive their right to first and/or second
27 meal periods as a condition of working for DEFENDANTS in violation of California law. As such,
28 DEFENDANTS violated including but not limited to, Labor Code section 432.6 by virtue of

1 including but not limited to, requiring Aggrieved Employees to sign invalid meal period waivers as
2 a condition of employment and/or for threatening, retaliating and/or discriminating against and/or
3 terminating Aggrieved Employees because of their refusal to waive their meal period rights.

4 130. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
5 engaged in these same herein described unlawful practices, which led to violations of the California
6 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
7 unlawful practices to other Aggrieved Employees that it applied to PLAINTIFF.

8 **FIRST CAUSE OF ACTION**
9 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
10 **2698, *ET SEQ.***

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

13 131. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

14 **Failure to Keep Accurate Records**

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

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

24 134. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
25 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
26 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
27 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
28 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay

1 period during which the referenced statutes and Wage Order provisions were violated.¹

2 **Meal Period Violations**

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

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

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

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

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

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

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

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

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

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

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

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

1 **Rest Period Violations**

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

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

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

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

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

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

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

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

20 **Minimum and Overtime Wage Violations**

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

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

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

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

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

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

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

1 in a week.

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

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

13 161. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
14 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
15 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
16 Wage Orders, section 20.

17 **Statutory Wage Violations**

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

1 **Refusal to Make Payment**

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

10 **Standard Conditions of Labor Violations**

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

19
20 **Business Expense Violations**

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

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

1 incurred by the employee enforcing the rights granted by this section.”

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

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

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

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

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

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

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

1 California law.

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

6 **Wage Statement Violations**

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

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

24 176. Moreover, due to violations detailed above, including but not limited to,
25 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
26 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
27 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
28 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed

1 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
2 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
3 compensation earned during the pay period into the regular rate of pay for purposes of calculating
4 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
5 overtime worked by PLAINTIFF and other Aggrieved Employees.

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

11 178. Failure to list all hours worked on a wage statement, gives rise to an inference of
12 injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th
13 1308, 1337).

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

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

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

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

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

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

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

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

17 **Unlawful Deductions**

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

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

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

1 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
2 to pay each employee”).

3 **Sick Leave Violations**

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

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

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

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

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

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

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

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

7 **Untimely Payment of Final Wages**

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

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

21 199. Based on information and belief, DEFENDANTS failed and continue to fail to timely
22 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
23 violation of Labor Code section 201-202. Moreover, final paychecks are not timely provided and/or
24 once provided to Aggrieved Employees did not include all wages owed as they are devoid of,
25 including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation
26 pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

27 200. Based on information and belief, DEFENDANTS failed to timely provide all owed
28 wages immediately upon discharge of employment. Based on information and belief, at times,

1 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
2 Aggrieved Employees would not be called in for work for longer than a single pay period due to
3 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
4 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
5 the end of such periods of employment.

6 201. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
7 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
8 256.

9 **Unlawful Agreements**

10 *Unlawful Agreements.*

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

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

28 204. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a

1 condition of employment, DEFENDANTS violated including but not limited to, Labor Code section
2 432.5.

3 **Violation of Labor Code Section 432.6**

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

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

11 207. Labor Code Section 432.6(b) provides in pertinent part:

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

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

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

- 27 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
28 relevant California Labor Code provisions listed herein only if permitted by the

1 PAGA statute, pursuant to Labor Code section 2699(a); and
2 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
3 violations without a civil penalty recoverable under the PAGA, all in the default
4 amounts provided by Labor Code section 2699(f).

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

7 **PRAYER FOR RELIEF**

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

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

16 Dated: January 21, 2025 **CROSNER LEGAL, PC**

17
18 By: 
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