

JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

Attorneys for Plaintiff ROBERT PALENCIA
as an individual and on behalf of all other
similarly situated Class Members and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

ROBERT PALENCIA, as an individual and
on behalf of all other similarly situated
Class Members,

Plaintiff,

v.

COMPLETE COACH WORKS, a
California Corporation; and DOES 1-100,
inclusive,

Defendants.

Case No.: CVRI2500936

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Recovery of Unpaid Minimum Wages and Liquidated Damages**
- 2. Recovery of Unpaid Overtime Wages**
- 3. Failure to Provide Meal Periods or Compensation in Lieu Thereof**
- 4. Failure to Provide Rest Periods or Compensation in Lieu Thereof**
- 5. Violations of Labor Code Section 226**
- 6. Failure to Timely Pay All Wages Due Upon Separation of Employment**
- 7. Failure to Reimburse Business Expenses**
- 8. Unfair Competition *and***
- 9. Violation of the Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

1 Plaintiff, ROBERT PALENCIA (“PLAINTIFF”), as an individual and on behalf of all other
2 similarly situated Class Members (as defined below) and Aggrieved Employees (as defined below),
3 hereby files this First Amended Complaint against Defendants COMPLETE COACH WORKS, a
4 California Corporation; and DOES 1-100, inclusive, (collectively referred to herein as
5 “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in the County of Riverside pursuant to California Code of Civil Procedure section 395.5
9 because DEFENDANTS transact business within this judicial district, DEFENDANTS maintain
10 their principal place of business within this judicial district, DEFENDANTS employed PLAINTIFF
11 to work in this judicial district and some of the acts, omissions, and conduct alleged by PLAINTIFF
12 herein occurred in this judicial district. Venue is also proper pursuant to section 393 of the California
13 Code of Civil Procedure because the cause, or some part of the cause, arose in the County of
14 Riverside.

15 **THE PARTIES**

16 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
17 California and a citizen of the State of California.

18 3. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
19 title(s) of automotive electrician helper and/or a similar title(s) and/or job position(s) from in or
20 around 2022 through in or around November 2024. DEFENDANTS assigned PLAINTIFF to work
21 primarily at DEFENDANTS’ facilities located in Riverside, California.

22 4. Defendant, COMPLETE COACH WORKS, is a California Corporation that, at all
23 relevant times, was authorized to do business within the State of California and is doing business in
24 the State of California.

25 5. DEFENDANTS own, operate, manage and/or staff its employees to work at the
26 warehouse distribution centers, warehouses, manufacturing centers, facilities and/or other
27 location(s) in California, including but not limited to warehouse distribution center(s), warehouse(s),
28 manufacturing center(s), facilities and/or other location(s) in Riverside, California. DEFENDANTS

1 specialize in the including but not limited to, manufacture of buses. DEFENDANTS, through its
2 various locations, serve the including but not limited to, manufacturing and/or transportation
3 industry.

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

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

20 **JOINT LIABILITY**

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

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

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

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

1 form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel
2 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

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

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

26 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
27 and working conditions of PLAINTIFF and Class Members and Aggrieved Employees. As such,
28 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and

1 the Class Members and Aggrieved Employees' employment, including the instrumentality that
2 resulted in the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

3 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
4 control over, applied the same policies and practices, and engaged in the same acts and omissions
5 with regard to the other Class Members and Aggrieved Employees.

6 **CLASS ALLEGATIONS**

7 15. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly
8 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
9 seeks to represent are defined as follows and referred to as the "Class" or "Class Members":

10 All current and former non-exempt employees that worked either
11 directly or via a staffing agency for any one or more of the
12 DEFENDANTS at any location in California at any time within the
13 four years prior to the filing of the initial Complaint ("Class Period").

14 a. Numerosity. While the exact number of Class Members is unknown to
15 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
16 all members is impractical under the circumstances of this case. PLAINTIFF is
17 informed and believes the Class consists of at least 50 individuals.

18 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
19 because common questions of law and fact predominate over individual issues.
20 Common questions include, but are not limited to, the following: (1) whether
21 DEFENDANTS understated hours worked and failed to pay all amounts due to
22 PLAINTIFF and the Class Members for wages earned, including minimum and
23 overtime wages, under California law; (2) whether DEFENDANTS provided
24 PLAINTIFF and the Class Members with all meal periods or premium payments
25 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
26 provided PLAINTIFF and the Class Members with all rest periods or premium
27 payments in lieu thereof, in compliance with California law; (4) whether
28 DEFENDANTS provided PLAINTIFF and Class Members with accurate,

1 itemized wage statements in compliance with California law, displaying,
2 including but not limited to, the total hours worked during the pay period; (5)
3 whether DEFENDANTS timely produce complete employment records,
4 including but not limited to, all personnel records, pay and time records, upon
5 written request(s) by PLAINTIFF and the Class Members; (6) whether
6 DEFENDANTS timely paid PLAINTIFF and the Class Members all wages due
7 upon separation of employment; (7) whether DEFENDANTS failed to
8 reimburse PLAINTIFF and the Class Members for all business expenses; and
9 (8) whether DEFENDANTS violated California Business and Professions Code
10 sections 17200, *et seq.*

11 c. Ascertainable Class. The proposed Class is ascertainable as members can be
12 identified and located using information in DEFENDANTS' business, payroll
13 and personnel records.

14 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
15 PLAINTIFF suffered a similar injury as members of the Class as a result of
16 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
17 and pay all owed minimum and overtime wages, failure to provide proper meal
18 periods and rest periods or premium compensation in lieu thereof, failure to
19 provide accurate wage statements, failure to timely produce complete
20 employment records, failure to reimburse business expenses, and failure to
21 timely pay all wages due upon separation of employment.

22 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
23 Class Members. PLAINTIFF has no interests adverse to the interests of the other
24 Class Members. Counsel who represent PLAINTIFF are competent and
25 experienced in litigating similar class action cases and are California lawyers in
26 good standing. Counsel for PLAINTIFF have the experience and resources to
27 vigorously prosecute this case.

28 f. Superiority. A class action is superior to other available means for the fair and

1 efficient adjudication of this controversy since individual joinder of all members
2 of the class is impractical. Class action treatment will permit a large number of
3 similarly situated persons to prosecute their common claims in a single forum
4 simultaneously, efficiently, and without the unnecessary duplication of effort
5 and expense that numerous individual actions would engender. Furthermore, as
6 the damages suffered by each individual member of the Class may be relatively
7 small, the expenses and burden of individual litigation would make it difficult
8 or impossible for individual members of the Class to redress the wrongs done to
9 them, while an important public interest will be served by addressing the matter
10 as a class action. The cost to the court system of adjudication of such
11 individualized litigation would be substantial. Individualized litigation would
12 also present the potential for inconsistent or contradictory judgments. Finally,
13 the alternative of filing a claim with the California Labor Commissioner is not
14 superior, given the lack of discovery in such proceedings, the fact that there are
15 fewer available remedies, and the losing party has the right to a trial de novo in
16 the Superior Court.

17 **FACTUAL AND LEGAL ALLEGATIONS**

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

22 17. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job
23 title(s) of automotive electrician helper and/or a similar title(s) and/or job position(s) from in or
24 around 2022 through in or around November 2024.

25 18. PLAINTIFF regularly worked at least eight (8) hours per day, at least five (5) days
26 per week, at times working more than eight (8) hours in a workday and/or more than forty hours in
27 a workweek.

28 19. DEFENDANTS assigned PLAINTIFF to work primarily at DEFENDANTS'
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 facilities located in Riverside, California. DEFENDANTS also assigned PLAINTIFF to work at
2 other job sites located in California.

3 20. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
4 DEFENDANTS as hours worked.

5 21. PLAINTIFF and other Class Members and Aggrieved Employees also earned non-
6 discretionary compensation, including without limitation, non-discretionary bonus/incentive pay
7 and/or other non-discretionary compensation.

8 22. **Unpaid Minimum and Overtime Wages.** Based on information and belief,
9 DEFENDANTS failed to compensate PLAINTIFF and Class Members and Aggrieved Employees
10 for all hours worked, resulting in the underpayment of minimum and overtime wages.
11 DEFENDANTS failed to compensate PLAINTIFF and Class Members and Aggrieved Employees
12 for all hours worked by virtue of, DEFENDANTS' failure to relieve employees of all
13 duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or
14 improper meal periods, as explained below.

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

21 24. For example, as explained above, DEFENDANTS required PLAINTIFF to monitor
22 a work communication device at all times during PLAINTIFF's shifts, including but not limited to,
23 during unpaid, purportedly off-duty meal periods. As such, PLAINTIFF was rarely, if ever, relieved
24 of all duties and DEFENDANTS' control during unpaid meal periods, resulting in DEFENDANTS'
25 failure to compensate PLAINTIFF for all hours worked and the underpayment of wages owed to
26 PLAINTIFF.

27 25. Based on information and belief, Class Members and Aggrieved Employees were
28 not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to

1 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies
2 and/or practices.

3 26. For example, DEFENDANTS required, suffered and/or permitted Class Members
4 and Aggrieved Employees to complete off-the-clock work tasks prior to clocking in for the start of
5 their shifts, after clocking out for the end of their shifts and/or during unpaid meal periods, resulting
6 in DEFENDANTS' failure to compensate Class Members and Aggrieved Employees for all hours
7 worked and the underpayment of wages owed to Class Members and Aggrieved Employees.

8 27. For example, at times, PLAINTIFF was required to respond to calls/text messages
9 from PLAINTIFF's supervisor after hours to discuss work-related matters off-the-clock, resulting
10 in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment
11 of wages owed to PLAINTIFF.

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

18 29. Based on information and belief, Class Members and Aggrieved Employees were
19 not compensated for all time spent booting, logging into, initiating and/or reinitiating
20 DEFENDANTS' computer/electronic timekeeping systems/apps, resulting in pre-shift off-the-clock
21 work and/or off-the-clock work during unpaid meal periods and the underpayment of minimum
22 wages and overtime wages owed to Class Members and Aggrieved Employees.

23 30. Based on information and belief, at times, Class Members and Aggrieved Employees
24 were required to spend time either reinitiating and/or otherwise troubleshooting DEFENDANTS'
25 electronic/employee time-keeping systems/apps prior to being able to clock in and/or were unable
26 to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-
27 the-clock work and the underpayment of wages owed to Class Members and Aggrieved Employees.
28 Based on information and belief, Class Members and Aggrieved Employees experienced the same

1 issues when clocking out for shifts and/or back in for meal periods. This time spent under
2 DEFENDANTS' control was not recorded and not compensated and resulted in unpaid minimum
3 wages owed to Class Members and Aggrieved Employees.

4 31. Based on information and belief, at times, PLAINTIFF and other Class Members and
5 Aggrieved Employees were pressured to complete work tasks off-the-clock, such as but not limited
6 to, gathering/returning work-related equipment/safety gear, make any necessary adjustments to
7 tools/equipment/their assigned vehicles, perform maintenance/cleaning tasks, donning/doffing work
8 clothing/uniforms/protective equipment, make/respond to work-related communications and/or
9 complete other work tasks off-the-clock, however, DEFENDANTS failed to compensate
10 PLAINTIFF and other Class Members and Aggrieved Employees for all time spent completing
11 these/other work-related tasks, resulting in DEFENDANTS' failure to compensate PLAINTIFF and
12 other Class Members and Aggrieved Employees for all hours worked and the underpayment of
13 wages owed to PLAINTIFF and other Class Members and Aggrieved Employees.

14 32. As explained herein, based on information and belief, at times, Class Members and
15 Aggrieved Employees were required to stand in line behind other employees to access
16 DEFENDANTS' time-keeping system and/or were required to spend time reinitiating
17 DEFENDANTS' time-keeping system before they could clock in for the start of their shifts and/or
18 after completing a purported meal period.

19 33. Based on information and belief, DEFENDANTS failed to pay Class Members and
20 Aggrieved Employees the applicable minimum wage for the county and/or city within which the
21 Class Member worked in California.

22 34. For example, based on information and belief, DEFENDANTS failed to pay Class
23 Members and Aggrieved Employees who worked in the city and/or county of San Francisco, at the
24 applicable hourly wage rate(s) in effect for the city and/or county of San Francisco, and as such
25 failed to pay all owed minimum wages, in violation of, including but not limited to, the San
26 Francisco Minimum Compensation Ordinance and Labor Code Section 1197. See San Francisco
27 Labor and Employment Code, Division 1, Article 111, Section 111.3(a)(1)(A)(ii) Minimum
28 Compensation Components (increasing the minimum wage rate, effective July 1, 2023, to \$20.22

1 per hour and to \$20.96, effective July 1, 2024).

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

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

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

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

21 39. 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 Class Members
24 and Aggrieved Employees worked, resulting in the miscalculation and underpayment of overtime
25 wages owed to Class Members and Aggrieved Employees who worked in cities and/or counties in
26 California with minimum wage rates above the California minimum wage rate.

27 40. Based on information and belief, DEFENDANTS failed to incorporate all non-
28 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive

1 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
2 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
3 wages owed to PLAINTIFF and other Class Members and Aggrieved Employees.

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

11 42. For example, DEFENDANTS implemented an incentive pay structure in which
12 Class Members and Aggrieved Employees accrued additional hours of pay based on number of
13 hours of work and compliance with DEFENDANTS' policies and practices. DEFENDANTS had
14 the authority to reduce or "dock" the number of accrued paid hours for failing to comply with
15 DEFENDANTS' policies. For example, if a Class Member was late for work, DEFENDANTS
16 would "dock" time from accrued paid time off. This pay structure created/creates the functional
17 equivalent of non-discretionary incentive pay in which Class Members and Aggrieved Employees
18 are incentivized to comply with DEFENDANTS' policies and practices, however, DEFENDANTS
19 failed to incorporate this earned non-discretionary pay into the regular rate(s) of pay for purposes of
20 calculating the owed overtime rate(s), owed meal period premiums and owed rest period premiums,
21 resulting in the miscalculation and underpayment of owed overtime wages, owed meal period
22 premiums and owed rest period premiums.

23 43. **Meal Period Violations.** PLAINTIFF and other Class Members and Aggrieved
24 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
25 at least one meal period. However, PLAINTIFF and other Class Members and Aggrieved
26 Employees would not receive legally compliant thirty (30) minute first and second meal periods.
27 Based on information and belief, Class Members and Aggrieved Employees were consistently
28 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take

1 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due
2 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
3 pressuring them to take non-compliant meal periods or skip meal periods completely.

4 44. For example, at times, PLAINTIFF was forced to take shortened, interrupted and/or
5 late meal periods (i.e. after working five (5) or more hours) due to including but not limited to, the
6 need to complete assigned job duties.

7 45. Based on information and belief, DEFENDANTS would unlawfully edit the clock in
8 and out times for PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods
9 in order to display a timely at least thirty minute off-duty meal period during most if not all shifts
10 worked notwithstanding that DEFENDANTS had actual and/or constructive knowledge that Class
11 Members and Aggrieved Employees were forced to take noncompliant meal periods and/or work
12 through their meal periods.

13 46. Based on information and belief, per DEFENDANTS' uniform policy and practice,
14 Class Members and Aggrieved Employees who worked shifts of more than ten hours did not receive
15 a second legally compliant thirty (30) minute second meal break.

16 47. Based on information and belief, PLAINTIFF did not sign a valid meal period waiver
17 during PLAINTIFF's employment.

18 48. Based on information and belief, other Class Members and Aggrieved Employees
19 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
20 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
21 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
22 duties, and/or the need to meet DEFENDANTS' goals and expectations.

23 49. Based on information and belief, DEFENDANTS implemented policies and/or
24 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
25 DEFENDANTS' control during unpaid meal periods.

26 50. Based on information and belief, DEFENDANTS required Class Members and
27 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
28 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and

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

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

9 52. Moreover, based on information and belief, Class Members and Aggrieved
10 Employees who worked shifts of more than ten (10) and/or twelve (12) hours did not receive a
11 second legally compliant thirty (30) minute second meal period.

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

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

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

27 56. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
28 Employees, an additional hour of wages at their respective regular rates of compensation for each

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

6 57. For example, as described herein, DEFENDANTS implemented an incentive pay
7 structure in which Class Members and Aggrieved Employees earned non-discretionary
8 compensation in pay periods during which they missed meal periods and/or received non-compliant
9 meal periods, however, to the extent meal period premiums were paid at all, DEFENDANTS failed
10 to incorporate this incentive pay into the regular rate(s) of pay used to calculate any owed meal
11 period premiums resulting in the miscalculation and underpayment of meal period premium
12 payments.

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

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

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

24 61. Based on information and belief, Class Members and Aggrieved Employees were at
25 times unable to take compliant rest periods due to lack of coverage/their need to complete assigned
26 job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had
27 purported rest periods restricted to DEFENDANTS' premises/their assigned work
28 locations/workstations.

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

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

6 64. Based on information and belief, at times, Class Members and Aggrieved
7 Employees' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due
8 to understaffing, the nature and constraints of their job duties, and/or due to commentary from
9 supervisors/managers pressuring them to skip rest periods completely or otherwise take non-
10 compliant rest periods.

11 65. Moreover, based on information and belief, at times, DEFENDANTS failed to
12 provide any form of a third rest period on shifts lasting longer than ten hours.

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

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

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

26 69. For example, as described herein, DEFENDANTS implemented an incentive pay
27 structure in which Class Members and Aggrieved Employees earned non-discretionary
28 compensation in pay periods during which they missed rest periods and/or received non-compliant

1 rest periods, however, to the extent rest period premiums were paid at all, DEFENDANTS failed to
2 incorporate this incentive pay into the regular rate(s) of pay used to calculate any owed rest period
3 premiums resulting in the miscalculation and underpayment of rest period premium payments owed
4 to Class Members and Aggrieved Employees.

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

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

22 72. Separately, and independent of the above allegations, based on information and
23 belief, at times, DEFENDANTS issued wage statements to Class Members and Aggrieved
24 Employees that failed to list the total hours worked, in violation of including but not limited to,
25 Labor Code section 226 (a)(2).

26 73. As described herein, based on information and belief, DEFENDANTS also failed to
27 incorporate all forms of non-discretionary compensation earned during the pay period into the
28 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour

1 of overtime worked by PLAINTIFF and other Class Members and Aggrieved Employees.

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

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

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

14 77. Based on information and belief, wage statements issued by DEFENDANTS failed
15 to list the inclusive dates of the pay period for which the Class Member is being paid.

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

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

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

1 **81. Failure to Produce Employment Records.** Based on information and belief,
2 DEFENDANTS have a uniform policy and practice of failing to timely produce or make available
3 a current or former employee's time, pay, and/or personnel records when requested pursuant to
4 Labor Code sections 226 and/or the applicable Wage Order.

5 82. For example, PLAINTIFF, through counsel, sent a written request for payroll and
6 personnel records to DEFENDANTS on or around including but not limited to the following date(s):
7 December 13, 2024. Yet, DEFENDANTS failed to timely produce complete records within the time
8 periods delineated by California labor law. For example, to date, DEFENDANTS have not
9 produced any records.

10 83. Based on information and belief, DEFENDANTS failed and continue to fail to timely
11 produce complete time, pay, and personnel records when requested by other Class Members and
12 Aggrieved Employees.

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

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

25 86. For example, DEFENDANTS failed to furnish PLAINTIFF with a final paycheck
26 containing all owed paid time off, including but not limited to at least four (4) days of paid time off
27 wages owed but never paid to PLAINTIFF.

28 87. Based on further information and belief, DEFENDANTS failed to timely provide all
20
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

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

10 88. These violations subject DEFENDANTS to civil penalties under Labor Code section
11 203, 210, and/or 256.

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

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

25 91. For example, based on information and belief, Class Members and Aggrieved
26 Employees were required to receive and respond to work-related calls and/or messages from
27 including but not limited to supervisors and/or other employees regarding scheduling and/or other
28 work tasks and/or were required to download and use work-related applications on their personal

1 cell phones/mobile devices but were not reimbursed by DEFENDANTS at all and/or in full for these
2 business expenses.

3 92. For example, at times, including but not limited to, when DEFENDANTS assigned
4 PLAINTIFF to work in the field, DEFENDANTS required PLAINTIFF to respond to work-related
5 calls and/or messages on his personal cell phone/mobile device without reimbursing PLAINTIFF at
6 all and/or in full for these business expenses. DEFENDANTS also required PLAINTIFF to
7 communicate with DEFENDANTS via PLAINTIFF's personal cell phone/mobile device when
8 working in the field to relay to DEFENDANTS PLAINTIFF's total hours worked.

9 93. PLAINTIFF was also required to respond to calls/text messages from PLAINTIFF's
10 supervisor after hours on PLAINTIFF's personal phone/device(s) without being provided any
11 reimbursement for these business expenses.

12 94. Based on information and belief, DEFENDANTS also did not provide other Class
13 Members and Aggrieved Employees with any and/or full reimbursement for the business expenses
14 Class Members and Aggrieved Employees incurred in connection with being required to use their
15 personal cell phone/personal devices to carry out their assigned job duties, including without
16 limitation, increased data plan charges.

17 95. As explained above, based on information and belief, DEFENDANTS did not
18 reimburse Class Members and Aggrieved Employees for the cost of using their personal
19 phone/mobile device for work-related purposes and/or the cost of purchasing and/or maintaining
20 work uniforms/work clothing/work shoes, personal protective/safety gear/ hand tools/work
21 equipment.

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

27 97. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with
28 full reimbursement for all reasonable expenses associated with carrying out their duties required

1 that Class Members and Aggrieved Employees subsidize and/or carry the burden of business
2 expenses in violation of Labor Code section 2802.

3 98. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
4 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
5 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

6 **FIRST CAUSE OF ACTION**

7 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
8 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

9 99. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 100. It is fundamental that an employer must pay its employees for all time worked.
11 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
12 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
13 permits deductions from wages when the employer is required or empowered to do so by state or
14 federal law or when the deduction is expressly authorized in writing by the employee for specified
15 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223
16 prohibits the pay of less than a statutory or contractual wage scale.

17 101. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
18 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up
19 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
20 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
21 period is unlawful.

22 102. DEFENDANTS violated California’s minimum wage laws by failing to compensate
23 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
24 DEFENDANTS’ time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
25 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
26 and/or payment according to scheduled hours worked rather than actual hours worked (described
27 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
28 wages.

103. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
PLAINTIFF’S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 Class Members for all hours worked.

2 104. Based on information and belief, DEFENDANTS had actual or constructive
3 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
4 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
5 periods, policy and practice of payment according to scheduled work time rather than actual work
6 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
7 owed to PLAINTIFF and other Class Members.

8 105. Based on information and belief, DEFENDANTS failed to pay Class Members who
9 worked in the city and/or county of San Francisco, at the applicable hourly wage rate(s) in effect for
10 the city and/or county of San Francisco, and as such failed to pay all owed minimum wages, in
11 violation of, including but not limited to, the San Francisco Minimum Compensation Ordinance and
12 Labor Code Section 1197. See San Francisco Labor and Employment Code, Division 1, Article
13 111, Section 111.3(a)(1)(A)(ii) Minimum Compensation Components (increasing the minimum
14 wage rate, effective July 1, 2023, to \$20.22 per hour and to \$20.96, effective July 1, 2024).

15 106. Pursuant to Labor Code sections 1194 and 1194.2 PLAINTIFF and the Class
16 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
17 attorney's fees and costs, in an amount to be proved at trial.

18 107. In addition, Class Members working in DEFENDANTS' facilities in Richmond,
19 California, who were paid less than the minimum wage rate in effect for the City of Richmond, are
20 entitled to civil penalties.

21 **SECOND CAUSE OF ACTION**

22 **Recovery of Unpaid Overtime Wages**

23 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

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

25 109. Employees in California must be paid overtime, equal to one and one-half times the
26 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
27 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
28 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh

1 consecutive day of work in a workweek, unless they are exempt.

2 110. PLAINTIFF and the Class Members worked overtime hours for which they were not
3 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding,
4 automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods,
5 other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to
6 scheduled hours worked rather than actual hours worked (described above), and/or other unlawful
7 policies and/or practices described above which resulted in unpaid minimum and overtime wages
8 which resulted in the failure to account for all hours worked and thus the denial of all owed overtime
9 wages.

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

14 112. Based on information and belief, DEFENDANTS calculated the owed overtime
15 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
16 based on the minimum wage established for the cities and/or counties within which Class Members
17 worked, resulting in the miscalculation and underpayment of overtime wages owed to Class
18 Members who worked in cities and/or counties in California with minimum wage rates above the
19 California minimum wage rate.

20 113. Based on information and belief, DEFENDANTS further violated California's
21 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
22 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
23 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
24 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
25 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
26 other Class Members.

27 114. DEFENDANTS' conduct described above is in violation of California Labor Code
28 sections 510, and 1194 and all applicable Wage Orders.

1 115. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
2 wages, plus attorney's fees and costs, in an amount to be proved.

3
4 **THIRD CAUSE OF ACTION**

5 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
6 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

7 116. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

8 117. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
9 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
10 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
11 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
12 waived, but only under the following circumstances: (1) if an employee's total work period in a day
13 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
14 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
15 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
16 waived by mutual consent of the employer and employee, but only if the first meal period was not
17 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
18 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
19 done so.

20 118. Employers must pay employees an additional hour of wages at the employees'
21 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
22 meal period, first meal period provided after five (5) hours, second meal period provided after 10
23 hours). Lab. Code § 226.7.

24 119. As explained above, PLAINTIFF and other Class Members were consistently unable
25 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
26 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
27 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
28 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
completely.

1 120. Based on information and belief, DEFENDANTS had and continue to have a policy
2 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
3 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class
4 Members did not receive compliant meal periods.

5 121. Moreover, based on information and belief, Class Members did not receive a timely,
6 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

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

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

16 124. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
17 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
18 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
19 all in an amount to be proved at trial.

20 **FOURTH CAUSE OF ACTION**
21 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
22 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

23 125. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

24 126. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
25 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
26 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
27 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
28 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10

1 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
2 The rest period requirement obligates employers to permit and authorize employees to take off-duty
3 rest periods, meaning employers must relieve employees of all duties and relinquish control over
4 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

5 127. If the employer fails to provide any required rest period, the employer must pay the
6 employee one hour of pay at the employee's regular rate of compensation for each workday the
7 employer did not provide at least one legally required rest period, pursuant to Labor Code section
8 226.7.

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

19 129. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
20 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
21 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
22 DEFENDANTS' control due to the nature and constraints of Class Members' job duties,
23 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
24 skip rest periods completely or otherwise take non-compliant rest periods.

25 130. Based on information and belief, DEFENDANTS implemented policies and/or
26 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
27 control during rest periods. Based on further information and belief, Class Members were pressured
28 to complete their work duties according to a designated schedule such that rest periods were only

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

2 131. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
3 second, or third rest periods as required by California law.

4 132. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
5 period premium to PLAINTIFF and other Class Members for each workday in which there was a
6 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
7 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
8 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
9 regular rate of compensation for purposes of determining the owed rest period premium.

10 133. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
11 hour of additional pay at the regular rate of compensation for each workday that a required rest
12 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
13 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
14 trial.

15 **FIFTH CAUSE OF ACTION**
16 **Violations of Labor Code Section 226**
17 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

18 134. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

19 135. *Failure to Furnish Accurate Itemized Wage Statements:* Pursuant to California Labor
20 Code § 226, subdivision (a), PLAINTIFF and the Class

21 Members were entitled to receive, semimonthly or at the time of each payment of wages, an
22 itemized wage statement accurately stating the following:

23 (1) gross wages earned, (2) total hours worked by the employee,
24 except for any employee whose compensation is solely based on a
25 salary and who is exempt from payment of overtime under
26 subdivision (a) of Section 515 or any applicable order of the Industrial
27 Welfare Commission, (3) the number of piece-rate units earned and
28 any applicable piece rate if the employee is paid on a piece-rate basis,
(4) all deductions, provided that all deductions made on written orders
of the employee may be aggregated and shown as one item, (5) net
wages earned, (6) the inclusive dates of the period for which the
employee is paid, (7) the name of the employee and his or her social
security number, except that by January 1, 2008, only the last four
digits of his or her social security number or an employee
identification number other than a social security number may be

1 shown on the itemized statement, (8) the name and address of the
2 legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

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

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

21 138. As explained above, any wage statements issued by DEFENDANTS failed to list the
22 "total hours worked" by PLAINTIFF and Class Members (by virtue of DEFENDANTS'
23 misclassification scheme, rounded time entries, automatic deduction for meal periods/failure to
24 relieve Class Members of all duties and employer control during unpaid meal periods, payment
25 according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock
26 work policies and practices all described in greater detail *supra*), which results in a violation of
27 Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an
28

1 inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22
2 Cal.App.5th 1308, 1337).

3 139. Based on information and belief, DEFENDANTS failed to list all applicable hourly
4 rates in effect during the pay period and the corresponding number of hours worked at each hourly
5 rate by the employee, in violation of Labor Code section 226(a)(9).

6 140. Separately, and independent from the above allegations, DEFENDANTS violated
7 Labor Code section 226(a)(8), by failing to issue wage statements that list the correct name and
8 address of the legal entity that is the employer.

9 141. Based on information and belief, DEFENDANTS failed to issue wage statements
10 that list the inclusive dates of the pay period for which the Class Member is being paid.

11 142. DEFENDANTS' failure to accurately list all hours worked on all wage statements
12 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
13 Members over whether they received all wages owed to them.

14 143. As a result, PLAINTIFF and other Class Members have suffered injury as they could
15 not easily determine whether they received all wages owed to them and whether they were paid for
16 all hours worked.

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

20 145. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
21 Class Members with accurate, itemized wage statements.

22 146. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
23 have suffered injury. The absence of accurate information on their wage statements has prevented
24 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
25 mathematical computations to determine the amount of wages owed, and will cause difficulty and
26 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
27 submission of inaccurate information about wages and amounts deducted from wages to state and
28 federal government agencies. As a result, PLAINTIFF and Class Members are required to

1 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
2 and pay records than if DEFENDANT had complied with its legal obligations.

3 147. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
4 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
5 violation occurred and one hundred dollars per employee per violation for each subsequent pay
6 period, not to exceed an aggregate penalty of four thousand dollars per employee.

7 148. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
8 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
9 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
10 provide currently employed Class Members with inaccurate wage statements in violation of
11 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
12 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
13 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
14 with California Labor Code § 226(a).

15 149. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
16 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
17 attorneys' fees, and costs of suit.

18 **Failure to Produce Employment Records**

19 150. *Time and Pay Records.* Labor Code section 226(b)-(c) and all applicable IWC Wage
20 Orders, section 7 require that employers keep the following information on file for each employee
21 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
22 and the corresponding number of hours worked by the employee at each hourly rate, when the
23 employee begins and ends each work period (including meal periods) and split intervals; total hours
24 worked by the employee; all deductions; gross wages earned; and net wages earned.

25 151. Section (b) of Labor Code section 226 further requires employers to "afford current
26 and former employees the right to inspect or receive a copy of records pertaining to their
27 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
28 provides that, "an employer who receives a written or oral request to inspect or receive a copy of

1 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
2 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
3 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
4 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
5 the employer. Lab. Code section 226(f).

6 152. *Personnel Records.* In addition to their right to time and pay records, employees, and
7 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
8 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
9 section 432 further specifies that employers must furnish copies of all employment records bearing
10 the employee's signature.

11 153. Labor Code section 1198.5 also requires that the file be made available for inspection
12 or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date
13 the employer receives a written request." An employer's failure to comply within this timeframe
14 likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty
15 from the employer. Lab. Code section 1198.5(k).

16 154. Based on information and belief, DEFENDANTS have a uniform policy and practice
17 of failing to produce or make available a current or former employee's personnel records and/or
18 payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the
19 applicable Wage Order.

20 155. DEFENDANTS' conduct explained above is in violation of Labor Code Sections
21 226(b) & (c). Accordingly, PLAINTIFF and Class Members are therefore each entitled to recover
22 a \$750.00 penalty from DEFENDANTS, along with costs and reasonable attorneys' fees, pursuant
23 to Labor Code Section 226(f).

24 156. DEFENDANTS' conduct is also in violation of Labor Code section 1198.5. Pursuant
25 to Labor Code Sections Labor Code section 1198.5(k), PLAINTIFF and the Class Members are
26 entitled to recover an additional \$750.00 penalty from DEFENDANTS, along with injunctive relief,
27 costs and reasonable attorney's fees pursuant to Labor Code section 1198.5(l).

SIXTH CAUSE OF ACTION

Failure to Timely Pay All Wages Due Upon Separation of Employment

PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

2 157. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

3 158. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
4 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
5 payable immediately.”

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

11 160. Based on information and belief, DEFENDANTS failed and continue to fail to timely
12 pay final wages to Class Members upon separation of employment in violation of Labor Code
13 section 201-202. Moreover, final paychecks once provided to Class Members do not include all
14 wages owed as they are devoid of, including but not limited to, all owed minimum wages, overtime
15 wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the
16 properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the
17 final rate including non-discretionary compensation, including but not limited to, shift differentials).

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

24 162. Under Labor Code section 203, Class Members who are no longer employed by
25 DEFENDANTS are entitled to recover waiting time penalties of up to 30 days’ pay, plus attorney’s
26 fees and costs, in an amount to be proved at trial.

27 **SEVENTH CAUSE OF ACTION**

28 **Failure to Reimburse Business Expenses**

(By PLAINTIFF and the Class Members Against all DEFENDANTS)

(By PLAINTIFF and the Class Members Against all DEFENDANTS)

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

171. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS' failure to pay minimum and overtime wages by virtue of its illegal policies and practices; DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized wage statements; DEFENDANTS' failure to timely produce complete employment records, including but not limited to, all personnel records, pay and time records, upon written request(s) by PLAINTIFF and the Class Members; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to, including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary compensation into the sick pay calculation and failure to base the accrued sick leave on the correct number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and practices, payment according to scheduled hours worked and/or other off-the-clock work policies and practices).

172. Due to DEFENDANTS' unfair and unlawful business practices in violation of the California Labor Code, DEFENDANTS have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate itemized wage statements, to timely produce complete employment records to current/former employees, to reimburse employees for all business expenses, to pay all owed minimum and overtime wages and to pay all wages due upon separation of employment of their employees.

173. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF and Class Members have suffered injury in fact and lost money or property, as described in more

1 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
2 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
3 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
4 unlawful and unfair business practices.

5 174. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
6 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
7 engaging in each of the unlawful practices and policies set forth herein.

8 175. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
9 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
10 by law.

11 **NINTH CAUSE OF ACTION**

12 **Violation of the Private Attorneys General Act of 2004**

13 **(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)**

14 176. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

15 177. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
16 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of PLAINTIFF,
17 the State of California and Aggrieved Employees, regarding violations of the California Labor Code
18 as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

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

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

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

2 179. On December 13, 2024, PLAINTIFF, through counsel, gave written notice by online
3 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
4 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
5 in this Complaint ("PAGA Notice").

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

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

15 182. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
16 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
17 Labor Code sections, 201-203, 210, 226, 226.7, 227.3, 245-246.5, 247.5, 256, 432.5, 432.6, 510,
18 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2100-2112,
19 2802, and all applicable Wage Orders.

20 183. As set forth above, DEFENDANTS have committed numerous violations of the
21 California Labor Code due to including but not limited to their failure to pay all owed minimum
22 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
23 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
24 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties
25 are in addition to any other relief available under the Labor Code.

26 184. DEFENDANTS have violated the following Labor Code sections and provisions of
27 the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

28 **Failure to Keep Accurate Records**

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

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

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

16 **Meal Period Violations**

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

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

25 190. Employers covered by any and all applicable IWC Wage Orders have an obligation
26 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
27

28 ¹ Labor Code § 2699(f)

1 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
2 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
3 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
4 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
5 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
6 provided”).

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

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

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

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

26 195. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
27 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
28 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in

1 violation of California's meal period laws.

2 196. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
3 periods in violation of California law and/or failed to pay the proper meal period premium for failure
4 to incorporate all non-discretionary remuneration including but not limited to, commissions,
5 multiple base rates of pay, bonuses, shift differential pay and/or other non-discretionary
6 compensation into the regular rate or compensation for purposes of calculating the owed meal period
7 premium.

8 197. These unlawful meal period policies and practices result in violations of Labor Code
9 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
10 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
11 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
12 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

13 **Rest Period Violations**

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

28 199. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
41
PLAINTIFF’S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

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

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

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

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

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

1 204. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
2 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
3 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

4 **Minimum and Overtime Wage Violations**

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

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

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

25 208. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
26 Aggrieved Employees for all hours worked.

27 209. Based on information and belief, DEFENDANTS had actual or constructive
28 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for

1 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and
2 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
3 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
4 Employees.

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

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

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

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

25 214. Based on information and belief, at times, Aggrieved Employees that were subject
26 to an AWS, were sent home early and/or worked less hours than those that were scheduled under
27 the AWS. On such shortened shifts, Aggrieved Employees were entitled to overtime pay at 1.5 times
28 the regular rate of pay after the first eight hours of work. Instead, DEFENDANTS paid Aggrieved

1 Employees their base rate for all hours worked on the shortened shift(s) in violation of the alternative
2 workweek schedule, and in violation of California Labor Code section 510, the applicable Wage
3 Order, and Labor Code section 1198. As such, Aggrieved Employees that were subject to an AWS
4 were also deprived of all owed overtime wages when required to work shortened shifts.

5 215. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
6 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
7 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
8 Wage Orders, section 20.

9 **Statutory Wage Violations**

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

21 **Standard Conditions of Labor Violations**

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

1 1197.1 and 2699.

2 **Business Expense Violations**

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

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

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

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

23 222. 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.

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

1 California law.

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

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

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

13 **Wage Statement Violations**

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

23 228. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
24 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
25 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
26 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
27 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
28 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in

1 effect during the pay period and the corresponding number of hours worked at each hourly rate by
2 the employee, in violation of Labor Code section 226(a)(9).

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

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

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

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

28 233. Based on information and belief, wage statements issued by DEFENDANTS failed
48
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid.

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

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

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

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

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

22 239. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
23 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
24 during which the statute provisions were violated. ²

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

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

28 ² Labor Code § 226.3 (establishing that the civil penalty is \$ per employee per violation”).

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

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

11 **Untimely Payment of Final Wages**

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

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

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

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

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

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

13 **Sick Leave Violations**

14 247. DEFENDANTS violated California's paid sick leave laws including, Labor Code
15 sections 245-246.5, 247.5. DEFENDANTS either failed to provide sick leave pay to PLAINTIFF
16 and other Aggrieved Employees or failed to properly accrue paid sick leave due to DEFENDANTS'
17 failure to account for actual hours worked (as explained above), and/or failure to incorporate
18 multiple rates of pay and/or all forms of non-discretionary remuneration including but not limited
19 to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary compensation
20 into the sick leave pay rate calculation.

21 248. DEFENDANTS failed to maintain accurate records of used sick leave and the
22 balance of paid sick leave left to the employees, which affected PLAINTIFF and Aggrieved
23 Employees' intelligent exercise of their paid sick leave.

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

28 250. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
51
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
2 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
3 were entitled to the maximum number of hours accruable.

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

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

10 253. On information and belief, PLAINTIFF alleges that all of these practices were
11 experienced and continue to be experienced by other Aggrieved Employees.

12 254. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
13 aforementioned Code provisions, and seeks injunctive relief, attorney's fees, declaratory relief, and
14 penalties as permitted by law.

15 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

16 *Unlawful Agreements.*

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

26 256. Labor Code section 432.6(a), provides that "a person shall not, as a condition of
27 employment, continued employment, or the receipt of any employment-related benefit, require any
28 applicant for employment or any employee to waive any right..." Based on information and belief,

1 DEFENDANTS required Aggrieved Employees to sign meal period waivers that were universally
2 signed as a condition of employment, including but not limited to, during the onboarding process.
3 By requiring Aggrieved Employees to sign unlawful meal period waivers as a condition of obtaining
4 and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these
5 invalid waivers are otherwise unlawful under Labor Code section 432.6.

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

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

13 259. Labor Code Section 432.6(b) provides in pertinent part:

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

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

23 **Violation of Labor Code Sections 2100-2112**

24 262. Pursuant to Labor Code Sections 2100–2112, employers with one hundred (100) or
25 more employees at a single warehouse distribution center, or one thousand (1,000) or more
26 employees at one or more warehouse distribution centers in California are required to provide
27 nonexempt employees, upon hire, with a written description of each quota they are subject to (e.g.,
28 quantified number of tasks to be performed or materials to be handled) within a defined period of

1 time and any potential adverse employment action that may result from failure to meet the quota.
2 Labor Code Section 2102 (see below) prohibits adverse employment actions against employees who
3 fail to meet their quota if the quota was not properly disclosed to the employee and prohibits quotas
4 that prevent an employee from taking his or her meal or rest breaks, use of restrooms, or that interfere
5 with compliance with California's occupational health and safety laws.

6 263. Labor Code Section 2101 provides:

7 Each employer shall provide to each employee, upon hire, or within 30 days of the effective
8 date of this part, a written description of each quota to which the employee is subject,
9 including the quantified number of tasks to be performed or materials to be produced or
10 handled, within the defined time period, and any potential adverse employment action that
11 could result from failure to meet the quota.

12 264. Labor Code Section 2102 provides:

13 An employee shall not be required to meet a quota that prevents compliance with meal or
14 rest periods, use of bathroom facilities, including reasonable travel time to and from
15 bathroom facilities, or occupational health and safety laws in the Labor Code or division
16 standards. An employer shall not take adverse employment action against an employee for
17 failure to meet a quota that does not allow a worker to comply with meal and rest periods,
18 or occupational health and safety laws in the Labor Code or division standards, or for failure
19 to meet a quota that has not been disclosed to the employee pursuant to Section 2101.

20 265. Labor Code Section 2104 provides in pertinent part:

21 (a)(1) If a current or former employee believes that meeting a quota caused a violation of
22 their right to a meal or rest period or required them to violate any occupational health and
23 safety laws in the Labor Code or division standards, they have the right to request, and the
24 employer shall provide, a written description of each quota to which the employee is subject
25 and a copy of the most recent 90 days of the employee's own personal work speed data.

26 (2) If a former employee requests a written description of the quotas to which they were
27 subject and a copy of their own personal work speed data pursuant to paragraph (1), the
28 employer shall provide 90 days of the former employee's quotas and personal work speed

1 data for the 90 days prior to the date of the employee's separation from the employer.

2 (b) An employer that receives a written or oral request for information pursuant to
3 subdivision (a) shall comply with the request as soon as practicable, but no later than 21
4 calendar days from the date of the request.

5 266. Based on information and belief, during the relevant period, DEFENDANTS
6 employed 100 or more Aggrieved Employees at a single warehouse distribution center and/or
7 employed 1,000 or more Aggrieved Employees at one or more distribution centers in California
8 rendering DEFENDANTS subject to the provisions of Labor Code Sections 2100-2112, during the
9 relevant period.

10 267. Based on information and belief, DEFENDANTS had/have a policy and practice of
11 failing to provide Aggrieved Employees, upon hire, with a written description of each quota they
12 are subject to (e.g., quantified number of tasks to be performed or materials to be handled) within a
13 defined period of time and any potential adverse employment action that may result from failure to
14 meet the quota. Based on further information and belief, DEFENDANTS had/have a policy and
15 practice of subjecting Aggrieved Employees to quotas that prevented those Aggrieved Employees
16 from taking their meal and rest periods and/or using bathroom facilities and/or interfered with
17 compliance of California's occupational health and safety laws.

18 268. Based on further information and belief, DEFENDANTS have/had a policy and
19 practice of subjecting Aggrieved Employees to adverse employment actions for failure to meet a
20 quota that was not disclosed pursuant to Labor Code Section 2101 and/or did not allow them to
21 comply with meal and rest period laws and/or occupational health and safety laws, in violation of
22 Labor Code section 2102.

23 269. Based on information and belief, DEFENDANTS failed and continue to fail to timely
24 produce upon written and/or oral request by current and/or former Aggrieved Employees of the
25 belief that meeting a quota caused a violation of their right to a meal or rest period and/or required
26 them to violate any occupational health and safety laws, a written description of each quota to which
27 the employee is subject and/or a copy of the most recent 90 days of the Aggrieved Employee's own
28 personal work speed data.

270. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor Code section 2100-2112 as to Aggrieved Employees and are subject to civil penalties.

271. Under the provisions of PAGA and the above mentioned Labor Code sections, including but not limited to Labor Code sections 201-203, 210, 226, 226.7, 227.3, 245-246.5, 247.5, 256, 432.5, 432.6, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2699.3, 2100-2112, 2802, and all applicable Wage Orders as well as all interpretations of these laws by California Courts and administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

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

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

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and Class Members and Aggrieved Employees as follows:

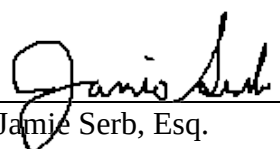
1. For an order that the action be certified as a class action;
2. For an order that PLAINTIFF be appointed as class representative;
3. For an order that counsel for PLAINTIFF be appointed as class counsel;
4. For compensatory damages according to proof;
5. For liquidated damages according to proof;
6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully

- 1 withheld from PLAINTIFF and the Class Members;
- 2 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
- 3 section 17200, *et seq.*, of the California Business and Professions Code;
- 4 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
- 5 10. For pre-judgment interest as permitted by law;
- 6 11. For civil penalties under Labor Code Section 2699;
- 7 12. For attorney's fees and costs reasonably incurred; and
- 8 13. For such other and further relief that the Court deems just and proper.
- 9

10 Dated: June 2, 2025

CROSNER LEGAL, PC

11

12 By: 

13 Jamie Serb, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff,
ROBERT PALENCIA

14

15

16 **DEMAND FOR JURY TRIAL**

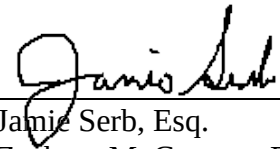
17 PLAINTIFF demands a trial by jury on all claims so triable.

18

19 Dated: June 2, 2025

CROSNER LEGAL, PC

20

21 By: 

22 Jamie Serb, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff,
ROBERT PALENCIA

23

24

25

26

27

28