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7 Attorneys for Plaintiff BENSON PAI
8 on behalf of the State of California,
9 and others similarly situated and aggrieved

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

12 BENSON PAI, on behalf of the State of
13 California, and others similarly situated and
aggrieved,

14 Plaintiff,

15
16 v.

17 THE ODP CORPORATION, a Delaware
18 Corporation; VEYER, LLC, a Delaware
Limited Liability Company; and DOES 1-
19 100, inclusive,

20 Defendants.

Case No.: 23CV040126

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

1 Plaintiff, THE ODP CORPORATION ("PLAINTIFF"), an individual on behalf of
2 PLAINTIFF, the State of California, and all other Aggrieved Employees (as defined below), hereby
3 files this Complaint against Defendants THE ODP CORPORATION, a Delaware Corporation;
4 VEYER, LLC, a Delaware Limited Liability Company; and DOES 1-100, inclusive, (collectively
5 referred to herein as "DEFENDANTS"). PLAINTIFF is informed and believes and thereon alleges
6 as follows:

7 INTRODUCTION

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

13 JURISDICTION AND VENUE

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

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

22 THE PARTIES

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

25 5. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for
26 DEFENDANTS as a non-exempt employee with a job title of warehouse associate or a similar title
27 from in or around January 2021 through in or around July 31, 2022. PLAINTIFF worked for
28 DEFENDANTS at DEFENDANTS' Fremont, California locations(s).

6. DEFENDANTS are either a Delaware corporation and/or a Delaware limited liability company that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

7. DEFENDANTS own, operate, manage and/or staff its employees to work at the warehouses, facilities and/or distribution centers and/or other location(s) in California, including but not limited to the warehouses, facilities and/or distribution centers in Fremont, California. DEFENDANTS, through its various s/other locations serves the manufacturing and/or logistics industry.

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

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

JOINT LIABILITY

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

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

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

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

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

7 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
8 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
9 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
10 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
11 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
12 considered the joint employers of PLAINTIFF and Aggrieved Employees. For example,
13 DEFENDANTS' wage statements issued to PLAINTIFF identify both "The ODP Corporation" and
14 "Veyer, LLC" as PLAINTIFF's employer. Also, based on information and belief, DEFENDANTS,
15 and each of them, maintain the same principal place of business and agent for service of process as
16 provided to the California Secretary of State and utilize some of the same attorneys and human
17 resources personnel to oversee employment-related matters.

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

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

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

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

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

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

21 **PAGA ALLEGATIONS**

22 19. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
23 of the State of California and all Aggrieved Employees, regarding violations of the California Labor
24 Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

25 All current and former non-exempt employees that worked either
26 directly or via a staffing agency for any one or more of the
27 DEFENDANTS at any location in California at any time from one
28 year plus 65 days from the filing of the initial Complaint through the

1 present ("PAGA Period").

2 20. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
3 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
4 limitations period and suffered one or more of the Labor Code violations set forth herein.
5 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
6 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
7 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
8 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by
9 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
10 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
11 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
12 *Id.* at 760-761.

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

14 21. PLAINTIFF, on May 30, 2023, through counsel, gave written notice by online filing
15 with the California Labor and Workforce Development Agency ("LWDA") informing it and the
16 Department of California Occupational Safety and Health that DEFENDANTS failed to comply
17 with California's labor laws with regard to the allegations alleged in this Complaint ("PAGA
18 Notice").

19 22. The PAGA Notice outlined PLAINTIFF's claims for violations of the California
20 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
21 Employees.

22 23. The LWDA and or the Department of California Occupational Safety and Health did
23 not provide notice of its intention to investigate DEFENDANTS' violations after expiration of the
24 65-day waiting time period, or at any time. To the extent any of the alleged violations were curable,
25 DEFENDANTS failed to cure within the time allotted by PAGA. Accordingly, PLAINTIFF has
26 exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently,
27 PLAINTIFF's right to file the instant lawsuit against DEFENDANTS has duly accrued.

28 24. PLAINTIFF seeks to recover the PAGA civil penalties through a representative

1 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
2 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

3 **FACTUAL ALLEGATIONS**

4 25. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
5 worked for DEFENDANTS in the State of California. At all times referenced herein,
6 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
7 permitted them to work.

8 26. PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFFS worked for
9 DEFENDANTS as a non-exempt employee with a job title of, warehouse associate or a similar title
10 from in or around January 2021 through in or around July 31, 2022. PLAINTIFF worked for
11 DEFENDANTS at DEFENDANTS' Fremont, California location(s). PLAINTIFF regularly worked
12 eight (8) to twelve (12) hours per day, at least five (5) days per week. DEFENDANTS paid
13 PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked.

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

16 28. Based on information and belief, at times during the relevant period, DEFENDANTS
17 also compensated PLAINTIFF and other Aggrieved Employees with non-discretionary bonuses
18 (e.g., non-discretionary performance-based bonuses) and/or other non-discretionary compensation.

19 29. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
20 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
21 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
22 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
23 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
24 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
25 below.

26 30. Based on information and belief, DEFENDANTS implemented a policy and/or
27 practice of rounding meal period start and end times and/or automatically deducting at least thirty
28 minutes per shift for meal periods, despite having actual and/or constructive knowledge that

1 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
2 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
3 PLAINTIFF and Aggrieved Employees of all wages owed.

4 31. Based on information and belief, Aggrieved Employees were not paid for all hours
5 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
6 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
7 the clock work policies and/or practices. For example, based on information and belief,
8 DEFENDANTS had and have a uniform policy and practice of requiring Aggrieved Employees to
9 perform uncompensated pre-shift and/or post-shift off-the-clock work. For example, upon arriving
10 at work but prior to clocking in for the start of their shifts, PLAINTIFF and other Aggrieved
11 Employees were required to form a line and wait behind other employees in order to access
12 DEFENDANTS' electronic timekeeping system and/or terminals so that PLAINTIFF and other
13 Aggrieved Employees could then clock in for the start of their shifts. This time spent under
14 DEFENDANTS' control, including but not limited to, time spent waiting in line behind other
15 employees and/or time spent booting up and/or reinitiating DEFENDANTS' electronic timekeeping
16 system was not recorded and not compensated resulting in approximately at least five (5) minutes
17 of pre-shift off-the-clock work per shift and denied minimum wages and overtime wages owed to
18 PLAINTIFF and other Aggrieved Employees.

19 32. For example, based on information and belief, Aggrieved Employees were required
20 to be at their machines/respective workstations on the production line at their scheduled shift start
21 time or face discipline. As such, Aggrieved Employees typically arrived at work prior to their
22 scheduled shift start times so that they could perform any required pre-shift work, including but not
23 limited to, bestow personal items in employee lockers/storage area, retrieve and/or compile work
24 tools/equipment, make any necessary adjustments to tools/equipment and/or perform any required
25 maintenance tasks, don work clothing/uniforms and/or protective equipment, and/or complete other
26 work tasks so as to be ready to be at their respective work stations at the their scheduled shift start
27 time as mandated by DEFENDANTS. This pre-shift off-the-clock work was neither recorded nor
28 compensated resulting in the substantial underpayment of wages owed to Aggrieved Employees.

1 33. Based on information and belief, Aggrieved Employees were also required to
2 perform post-shift off-the-clock work that was neither recorded nor compensated. For example,
3 based on information and belief, Aggrieved Employees were required to put away their work tools,
4 change out of their work clothing/uniforms and/or protective gear after clocking out for the end of
5 their shifts.

6 34. Based on information and belief, Aggrieved Employees were required to undergo
7 pre-shift and/or post shift security screenings.

8 35. Based on information and belief, Aggrieved Employees were required to undergo
9 pre-shift temperature screenings and/or were required to complete a COVID-19 questionnaire prior
10 to clocking in for a shift, resulting in unpaid off-the-clock work.

11 36. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
12 required to perform additional off-the-clock work for which they were not compensated. For
13 example, based on information and belief, DEFENDANTS did not compensate Aggrieved
14 Employees for time spent donning and doffing personal protective equipment, safety equipment
15 and/or uniforms/work clothing (e.g., goggles/glasses, gloves, and/or face masks) during meal
16 periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift.

17 37. Additionally, Aggrieved Employees were required to perform other off-the-clock
18 work for which they were not compensated. For example, based on information and belief,
19 DEFENDANTS' electronic employee time-keeping system at times malfunctioned such that
20 Aggrieved Employees were frequently required to either reinitiate the system prior to being able to
21 clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from
22 meal periods, resulting in consistent off-the-clock work and the underpayment of minimum and
23 overtime wages owed to Aggrieved Employees.

24 38. Based on information and belief, Aggrieved Employees experienced the same issues
25 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
26 control was not recorded and not compensated and resulted in unpaid minimum wages. Based on
27 information and belief, Aggrieved Employees were also required to complete off-the-clock work
28 outside of scheduled shift due to work-related phone calls and/or messages they received to their

1 phones and were required to respond to including but not limited to communications from other
2 Aggrieved Employees and/or supervisors, resulting in off-the-clock work and the underpayment of
3 minimum wages and overtime wages owed to Aggrieved Employees.

4 39. Based on information and belief, DEFENDANTS failed to pay Aggrieved
5 Employees for time they were required to spend completing orientation, policy questionnaires,
6 and/or time spent completing the onboarding process including but not limited to reviewing various
7 documents and policies provided by DEFENDANTS. Based on information and belief, this work time
8 was completed off-the-clock and was not compensated.

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

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

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

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

28 44. Based on information and belief, DEFENDANTS failed to incorporate all non-

1 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive
2 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
3 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
4 wages owed to PLAINTIFF and other Aggrieved Employees.

5 45. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
6 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
7 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
8 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
9 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
10 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
11 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
12 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
13 completely. For example, based on information and belief, Aggrieved Employees were forced to
14 take late meal periods in order to complete assigned job duties. Based on information and belief,
15 Aggrieved Employees were at times, interrupted during purported meal periods and/or had meal
16 periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned
17 job duties.

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

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

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

1 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

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

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

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

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

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

24 54. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
25 additional hour of wages at their respective regular rates of compensation for each workday a lawful
26 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
27 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
28 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,

1 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
2 compensation for purposes of calculating the owed meal period premium.

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

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

11 57. Based on information and belief, DEFENDANTS did not have a have a compliant
12 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
13 practice. For example, based on information and belief, Aggrieved Employees were at times, unable
14 to take compliant rest periods due to Aggrieved Employees' need to complete assigned job duties
15 and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported
16 rest periods restricted to DEFENDANTS' premises.

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

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

23 60. Based on information and belief, DEFENDANTS implemented policies and/or
24 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
25 DEFENDANTS' control during rest periods.

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

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

8 63. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC
9 Wage Orders, including but not limited to Wage Order 4, employees shall be provided with suitable
10 resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be
11 provided in an area separate from the toilet rooms and shall be available to employees during work
12 hours."

13 64. DEFENDANTS' locations/facilities are generally similar in layout and design, and
14 there was, and continues to be, space that allows for a resting facility that employees may use to
15 cease work and recover during meal or rest periods. DEFENDANTS could have provided
16 PLAINTIFF and Aggrieved Employees with a resting facility within DEFENDANTS'
17 facilities/locations with reasonable or no modification, but instead denied and continues to deny,
18 employees with suitable areas to rest (e.g. a breakroom). As a result, PLAINTIFF and other
19 Aggrieved Employees were forced to adjust to areas not conducive to resting, including but not
20 limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises
21 which are not designated or reserved for their rest, such as their personal vehicles.

22 65. DEFENDANTS did not provide PLAINTIFF and Aggrieved Employees with
23 suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

24 66. DEFENDANTS' failure to provide suitable resting facilities to PLAINTIFF and
25 Aggrieved Employees violated and continue to violate the applicable Wage Order, section 13(B)
26 and the California Labor Code, including but not limited to section 1198.

27 67. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
28 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied

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

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

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

19 70. For example, based on information and belief, DEFENDANTS' wage statements
20 issued to Aggrieved Employees do not provide an accurate overtime rate(s) because they do not list
21 overtime rate(s) of pay at 1.5 times the regular rate(s) of pay and instead list two separate overtime
22 rates of pay. For example, DEFENDANTS' wage statement for PLAINTIFF for pay period
23 beginning on July 31, 2022, and ending on August 13, 2022, shows one line item for "OT Pay" and
24 a separate line item for "OT Prem Pay." The OT Pay is the same rate of pay as PLAINTIFF's base
25 rate of pay, and a separate rate is listed under the "OT Prem Pay." Nowhere on the wage statements
26 do DEFENDANTS list the actual overtime rate of pay for each hour worked. As such,
27 DEFENDANTS' wage statements issued to Aggrieved Employees failed to list the overtime hourly
28 rate(s) in effect during the pay period and the corresponding number of hours worked at those rate(s),

1 in violation of Labor Code section 229(a)(9). See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222
2 (C.D. Cal. 2011) (finding Labor Code section 226 violation for failure to provide an accurate
3 overtime rate because instead of multiplying the regular rate of pay by one and one-half, the pay
4 stubs provided two overtime rate categories and with each providing corresponding rates that are
5 either the same or half of the regular rate.). As described herein, DEFENDANTS also failed to
6 incorporate all forms of non-discretionary compensation earned during the pay period, including but
7 not limited to, non-discretionary bonus/incentive pay and/or shift differential pay and/or other non-
8 discretionary compensation and/or multiple base rates of pay into the overtime pay rate calculation,
9 and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by
10 Aggrieved Employees.

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

15 72. Based on information and belief, wage statements issued by DEFENDANTS failed
16 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid. For
17 example, based on information and belief, DEFENDANTS issued wage statements containing a
18 category for retroactive pay without listing the accurate inclusive dates of the pay period during
19 which the retroactive pay was earned.

20 73. Separately, and independent of the above allegations, DEFENDANTS' wage
21 statements fail to list the total hours worked, in violation of Labor Code section 226(a)(2). For
22 example, DEFENDANTS' wage statement for PLAINTIFF for pay period beginning on July 31,
23 2022, and ending on August 13, 2022 lists "Total Hours Worked" for PLAINTIFF as 0.00.
24 However, the same wage statement also identifies a category for "Reg Hours" which lists 45.38
25 hours/units worked and lists categories for overtime hours/units worked. Also, even if PLAINTIFF
26 were to add up the total hours/units worked as listed on DEFENDANTS' wage statement(s),
27 PLAINTIFF would be unable to determine his total hours worked because, for example,
28 DEFENDANTS' wage statement(s) list two separate overtime categories resulting in a double

1 counting and/or listing of the number of hours worked twice thus reflecting an inaccurate accounting
2 of the total number of hours as listed on the wage statement(s), in violation of Labor Code section
3 226(a)(2).

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

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

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

13 77. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
14 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
15 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
16 from Aggrieved Employees paychecks during the relevant period, including but not limited to
17 deducting costs of uniforms and/or other business costs and/or deducting wages for purported
18 overpayments from previous pay periods and/or unlawfully deducting wages for negligently
19 damaged property. Such a practice is in violation of including but not limited to, Labor Code
20 Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

21 78. **Failure to Produce Employment Records.** Based on information and belief,
22 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
23 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code
24 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF sent a
25 written request for payroll and personnel records to DEFENDANTS. Yet, DEFENDANTS failed to
26 timely produce complete records within the time periods delineated by California labor law. For
27 example, DEFENDANTS failed to produce PLAINTIFF's time records. Based on information and
28 belief, DEFENDANTS failed and continues to fail to timely produce complete payroll and personnel

1 records when requested by other Aggrieved Employees. Based on information and belief,
2 DEFENDANTS failed and continue to fail to timely produce complete time, pay, and personnel
3 records when requested by other Aggrieved Employees.

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

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

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

24 82. Based on information and belief, DEFENDANTS shifted the costs of doing business
25 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
26 to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of Aggrieved
27 Employees' personal mobile phone, internet and/or data usage for work related purposes, including
28 but not limited to, to receive and respond to work related messages and/or phone calls. For example,

1 based on information and belief, Aggrieved Employees were required to receive and respond to
2 work-related calls and/or messages from supervisors and/or other Aggrieved Employees regarding
3 scheduling and/or other work tasks but were not reimbursed by DEFENDANTS at all and/or in full
4 for these business expenses.

5 83. Based on information and belief, DEFENDANTS failed to reimburse Aggrieved
6 Employees for expenses associated with having to purchase and/or maintain their own hand tools
7 and/or equipment required to perform their assigned job duties.

8 84. Based on information and belief, Aggrieved Employees were not reimbursed for the
9 cost of purchasing and/or maintaining work uniforms/clothing/shoes and/or protective gear (e.g.,
10 gloves and/or face masks). For example, DEFENDANT required PLAINTIFF to purchase steel-
11 toed safety shoes to wear for work but did not provide PLAINTIFF with any reimbursement for
12 these business expenses. Based on information and belief, at times, Aggrieved Employees were not
13 reimbursed for the business use of their personal vehicles, including mileage, wear and tear, and
14 cost of fuel when they were required to drive around and/or between job sites, and/or use their
15 personal vehicles in carrying out the duties assigned by DEFENDANTS. As such, DEFENDANTS
16 failed to compensate Aggrieved Employees at the legally mandated Internal Revenue Service (IRS)
17 per mile compensation rates in effect during the relevant period. As explained above, based on
18 information and belief, Aggrieved Employees were not reimbursed for the cost of using their
19 personal phone for work related purposes and/or the cost of purchasing and/or maintaining work
20 uniforms/work clothing/work shoes, personal protective/safety gear.

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

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

1 2802.

2 87. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
3 provides as follows:

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

12 89. Aggrieved Employees were not paid reporting time wages in accordance with
13 California law, including but not limited to the applicable IWC Wage Order. For example, based on
14 information and belief, at times, other Aggrieved Employees reported to work for a scheduled shift
15 but were sent home and/or were not put to work and were not paid all owed reporting time pay
16 wages in accordance with California law.

17 90. Based on information and belief, DEFENDANTS have a policy and practice of
18 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
19 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
20 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
21 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

22 91. **Violation of California Day of Rest Law.** Under California law, every employee in
23 California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" its
24 employees "to work more than six days in seven." *See* Labor Code Sections 551 and 552. Labor
25 Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

26 92. Based on information and belief, DEFENDANTS have and continue to have a
27 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
28 consecutively in a workweek, in violation of including but not limited to, Labor Code Section

1 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
2 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
3 violation of California law, including but not limited to Labor Code Section 551.

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

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

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

27 96. Upon information and belief, DEFENDANTS failed and continue to fail to comply
28 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with

1 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
2 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
3 wages.

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

8 98. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
9 that all employers with 26 or more employees are required to provide up to 80 hours for covered
10 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
11 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
12 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
13 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
14 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

15 99. **Seating Violations.** Per section 14(A-B) of all applicable IWC Wage Orders,
16 employees shall be provided with suitable seats when the nature of the work reasonably permits the
17 use of seats and when they are not actively engaged in the work duties that would not permit them
18 to be seated.

19 100. All applicable IWC Wage Orders, Section 14(A-B) provides:

20 (A) All working employees shall be provided with suitable seats when the nature of the
21 work reasonably permits the use of seats.

22 (B) When employees are not engaged in the active duties of their employment and the
23 nature of the work requires standing, an adequate number of suitable seats shall be placed in
24 reasonable proximity to the work area and employees shall be permitted to use such seats when it
25 does not interfere with the performance of their duties.

26 101. Suitable seating is one of the worker protections covered by California's Wage
27 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
28 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*

1 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

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

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

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

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

22 106. Upon separation of employment, Aggrieved Employees' final paychecks were not
23 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
24 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
25 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
26 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
27 accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate
28 including non-discretionary compensation, including but not limited to, shift differentials). For

1 example, DEFENDANTS did not furnish PLAINTIFF with any final paycheck for more than
2 seventy-two hours following the separation of PLAINTIFF's employment and PLAINTIFF's late
3 final paycheck was devoid of all wages owed, including but not limited to, all owed minimum
4 wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off
5 wages at the properly accrued rates, (including but not limited to, all owed vacation pay/paid time
6 off paid at the final rate including non-discretionary compensation, including but not limited to, shift
7 differentials).

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

16 108. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

17 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

18 109. Based on information and belief, DEFENDANTS required Aggrieved Employees to
19 agree in writing to unlawful conditions of employment including but not limited to unlawful non-
20 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements,
21 unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law
22 provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining
23 and/or continuing employment in violation of Labor Code section 432.5.

24 110. Based on information and belief, DEFENDANTS ordered unlawful financial credit
25 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
26 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
27 employment, in violation of California and Federal law, which results in a further violation of Labor
28 Code section 432.5.

1 111. Based on information and belief, DEFENDANTS also required Aggrieved
2 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
3 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
4 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
5 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
6 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
7 FCRA when conducting background screenings for applicants, including but not limited to
8 Aggrieved Employees that were subject to a background check as a condition of employment during
9 the application phase.

10 112. Based on information and belief, DEFENDANTS required Aggrieved Employees to
11 agree in writing to a background check which failed to abide by the requirements set forth in CA
12 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
13 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
14 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
15 the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,
16 failing to provide a way by which the individual could request a copy of the report, failing to disclose
17 the name, address, and telephone number of the third party preparing the report, and failing to
18 properly obtain authorization or consent to such a background check, and thus was an unlawful
19 background check.

20 113. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
21 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
22 section 432.5.

23 114. Based on further information and belief, DEFENDANTS also required Aggrieved
24 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
25 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
26 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
27 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

28 115. Based on further information and belief, DEFENDANTS knew that requiring
26
PLAINTIFF'S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
2 condition of obtaining and/or holding employment was unlawful.

3 116. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
4 condition of employment, DEFENDANTS violated Labor Code section 432.5.

5 Unlawful Inquires into Criminal History

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

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

15 Unlawful PAGA Waiver

16 119. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring
17 Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited
18 to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

19 120. An action pursuant to PAGA "...is a representative action on behalf of the state"
20 *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements
21 purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and
22 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384
23 ("We conclude that where, as here, an employment agreement compels the waiver of representative
24 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.")

25 121. Moreover, the California Supreme Court has ruled that a court cannot compel
26 arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an
27 individual PAGA claim. *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 ("There is
28 no individual component to a PAGA action because 'every PAGA action ... is a representative

1 action on behalf of the state.”)

2 122. Upon information and belief, DEFENDANTS required some Aggrieved Employees
3 to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
4 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS
5 required written agreement to an unlawful provision as a condition of employment which is a
6 violation of labor code section 432.5.

7 123. **Failure to Provide a Safe and Healthful Workplace.** During the PAGA Period,
8 DEFENDANTS failed to provide a safe and healthful workplace. Moreover, based on information
9 and belief, DEFENDANTS had a policy and practice of failing, within one business day after
10 DEFENDANTS or a representative of DEFENDANTS received a notice of potential exposure to
11 COVID-19, to notify PLAINTIFF and other Aggrieved Employees who were on the premises at the
12 same worksite as the qualifying individual within the infectious period, and the employers of
13 subcontracted employees who were on the premises at the same worksite as the qualifying individual
14 within the infectious period and the exclusive representative, if any, of the cleaning and disinfection
15 plan that the employer is implementing per the guidelines of the COVID 10 prevention program per
16 the Cal-OSHA COVID-19 Emergency Temporary Standards, among other things in violation of
17 Labor Code sections 6409.6 and/or 6432.

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

22 **FIRST CAUSE OF ACTION**
23 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
24 **2698, ET SEQ.**

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

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

28 **Failure to Keep Accurate Records**

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

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

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

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

14 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

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

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

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

1 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).

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

15 132. Based on information and belief, DEFENDANTS fail to timely produce or make
16 available Aggrieved Employees’ personnel records and/or payroll records when requested pursuant
17 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
18 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

19 **Meal Period Violations**

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

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

28 135. Employers covered by any and all applicable IWC Wage Orders have an obligation

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

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

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

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

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

27 140. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
28 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and

1 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
2 violation of California's meal period laws.

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

8 142. 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**

14 143. 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).

28 144. Moreover, under California law rest periods must be a “net” ten minutes in a suitable

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.”).

10 145. 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.

16 146. 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.

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

23 148. 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.

1 149. 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 **Failure to Provide Suitable Resting Facilities**

5 150. Per section 13 of all applicable IWC Wage Orders, including but not limited to Wage
6 Order 4, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage
7 Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet
8 rooms and shall be available to employees during work hours."

9 151. DEFENDANTS' locations/facilities are generally similar in layout and design, and
10 there was, and continues to be, space that allows for a resting facility that employees may use to
11 cease work and recover during meal or rest periods. DEFENDANTS could have provided
12 PLAINTIFF and Aggrieved Employees with a resting facility within DEFENDANTS'
13 facilities/locations with reasonable or no modification, but instead denied and continues to deny,
14 employees with suitable areas to rest (e.g. a breakroom). As a result, PLAINTIFF and other
15 Aggrieved Employees were forced to adjust to areas not conducive to resting, including but not
16 limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises
17 which are not designated or reserved for their rest, such as their personal vehicles.

18 152. DEFENDANTS did not provide PLAINTIFF and Aggrieved Employees with
19 suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

20 153. DEFENDANTS' failure to provide suitable resting facilities to PLAINTIFF and
21 Aggrieved Employees violated and continue to violate the applicable Wage Order, section 13(B)
22 and the California Labor Code, including but not limited to section 1198.

23 **Minimum and Overtime Wage Violations**

24 154. California law provides that employees in California must be paid for all hours
25 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
26 than the mandated minimum wage. See Labor Code section 1197 and the applicable Wage Order.
27 The minimum wage standard applies to each hour employees worked for which they were not paid.
28 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful

1 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
2 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

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

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

16 157. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
17 Aggrieved Employees for all hours worked.

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

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

28 160. Based on information and belief, DEFENDANTS further violated California's
35
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1 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
2 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
3 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
4 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
5 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
6 other Aggrieved Employees.

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

11 **Statutory Wage Violations**

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

23 **Refusal to Make Payment**

24 163. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
25 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
26 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
27 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
28 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*

1 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
2 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
3 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

4 **Standard Conditions of Labor Violations**

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

13 **Business Expense Violations**

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

20 166. Among other things, under California law, when employees must use their personal
21 cellphones for work-related purposes, the employer must reimburse them for a reasonable
22 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228
23 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
24 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
25 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile

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

1 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
2 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

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

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

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

13 170. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and other Aggrieved
14 Employees have suffered injury in that they were not completely reimbursed as mandated by
15 California law.

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

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

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

27 **Wage Statement Violations**

28 174. California law requires every employer semi-monthly or at the time of each payment

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

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

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

27 177. As explained above, wage statements issued by DEFENDANTS failed to list the
28 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,

1 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
2 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
3 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
4 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
5 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

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

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

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

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

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

27 185. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
28 Employees have suffered injury. The absence of accurate information on their wage statements has

1 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
2 mathematical computations to determine the amount of wages owed, and will cause difficulty and
3 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
4 submission of inaccurate information about wages and amounts deducted from wages to state and
5 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
6 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
7 and pay records than if DEFENDANT had complied with its legal obligations.

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

11 **Unlawful Deductions**

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

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

24 **Reporting Time Pay Violations**

25 189. Section 5 of all applicable IWC Wage Orders, provides as follows:

26 190. (A) Each workday an employee is required to report for work and does report, but is
27 not put to work or is furnished less than half said employee's usual or scheduled day's work, the

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

1 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
2 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less
3 than the minimum wage. (B) If an employee is required to report for work a second time in any one
4 workday and is furnished less than two (2) hours of work on the second reporting said employee
5 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
6 minimum wage.

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

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

18 **Violation of California Day of Rest Law**

19 193. Under California law, every employee in California is "entitled" to "one day's rest
20 [from labor] in seven"; and, no employer may "cause" its employees "to work more than six days in
21 seven." See Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of
22 the foregoing sections is a misdemeanor.

23 194. Based on information and belief, DEFENDANTS have and continue to have a
24 uniform policy and practice of requiring Aggrieved Employees to work at least seven days
25 consecutively in a workweek, in violation of including but not limited to, Labor Code Section
26 551. Based on information and belief, PLAINTIFF and/or other Aggrieved Employees were
27 suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in
28 violation of California law, including but not limited to Labor Code Section 551.

1 Seating Violations

2 195. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be
3 provided with suitable seats when the nature of the work reasonably permits the use of seats and
4 when they are not actively engaged in the work duties that would not permit them to be seated.

5 196. All applicable IWC Wage Orders, Section 14(A-B) provides:

6 (A) All working employees shall be provided with suitable seats when the nature of the
7 work reasonably permits the use of seats.

8 (B) When employees are not engaged in the active duties of their employment and the
9 nature of the work requires standing, an adequate number of suitable seats shall be placed in
10 reasonable proximity to the work area and employees shall be permitted to use such seats when it
11 does not interfere with the performance of their duties.

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

16 198. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and
17 other Aggrieved Employees with suitable seating, and when such employees were not engaged in
18 duties which required them to stand, no seating was placed in reasonable proximity to their
19 workstations.

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

25 200. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
26 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
27 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
28 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections

1 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
2 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
3 Aggrieved Employee, results in a separate civil penalty.

4 **Sick Leave Violations**

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

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

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

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

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

1 wages.

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

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

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

8 **Failure To Provide Supplemental Paid Sick Leave**

9 209. Labor Code § 248.2 provides that all employers with 26 or more employees are
10 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
11 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
12 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
13 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
14 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
15 Labor Code section 248.6.

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

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

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

28 **Untimely Payment of Final Wages**

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

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

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

20 215. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
21 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
22 256.

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

24 216. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
25 require any employee or applicant for employment to agree, in writing, to any term or condition
26 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
27 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
28 conditions of employment including but not limited to unlawful non-solicitation/non-compete

1 agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or
2 waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or
3 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment
4 in violation of Labor Code section 432.5.

5 217. The California Labor Code places certain procedural and substantive limits on an
6 employers' ability to conduct employee background checks and on how employers can use the
7 information they obtain through those background checks. Labor Code section 1024.5 states that
8 employers, except for financial institutions, may order a credit check only if the individual works
9 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
10 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
11 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
12 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
13 background check, including but not limited to identifying an appropriate reason for the background
14 check, a separate consent form with required disclosures and certain formatting requirements,
15 additional forms such as a summary of rights, a way by which to request a copy of the report, as
16 well as proper notice of adverse actions taken, among other statutory requirements.

17 218. Based on information and belief, DEFENDANTS ordered unlawful financial credit
18 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
19 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
20 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

21 219. Based on information and belief, DEFENDANTS required Aggrieved Employees to
22 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
23 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

24 220. Based on further information and belief, DEFENDANTS required Aggrieved
25 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
26 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
27 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
28 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

1 221. Based on further information and belief, DEFENDANTS knew that requiring
2 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
3 condition of obtaining and/or holding employment was unlawful.

4 222. By requiring that Aggrieved Employees sign off on the illegal background and/or
5 financial checks, DEFENDANTS violated Labor Code section 432.5.

6 Unlawful Inquires into Criminal History

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

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

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

21 Unlawful PAGA Waiver

22 226. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring some
23 Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited
24 to, an unlawful waiver of PAGA and/or representative actions as a condition of employment.

25 227. An action pursuant to PAGA “...is a representative action on behalf of the state”
26 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements
27 purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and
28 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384

1 (“We conclude that where, as here, an employment agreement compels the waiver of representative
2 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

3 228. Moreover, the California Supreme Court has ruled that a court cannot compel
4 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an
5 individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is
6 no individual component to a PAGA action because ‘every PAGA action ... is a representative
7 action on behalf of the state.’”)

8 229. Upon information and belief, DEFENDANTS required Aggrieved Employees to
9 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
10 requiring PLAINTIFF and other Aggrieved Employees to agree, in writing, to an unlawful PAGA
11 waiver, DEFENDANTS required written agreement to an unlawful provision as a condition of
12 employment which is a violation of labor code section 432.5.

13 **Failure to Provide a Safe and Healthful Workplace.**

14 230. Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the
15 California Occupational Safety and Health Act (“Cal OSHA”), employers must maintain a safe and
16 healthful place of employment. Specifically, Labor Code section 6400, requires the following:

17 231. (a) Every employer shall furnish employment and a place of employment that is safe
18 and healthful for the employees therein...

19 232. Labor Code section 6401 provides as follows:

20 233. Every employer shall furnish and use safety devices and safeguards, and shall adopt
21 and use practices, means, methods, operations, and processes which are reasonably adequate to
22 render such employment and place of employment safe and healthful. Every employer shall do every
23 other thing reasonably necessary to protect the life, safety, and health of employees.

24 234. Labor Code section 6402 prohibits the following:

25 235. No employer shall require, or permit any employee to go or be in any employment
26 or place of employment which is not safe and healthful.

27 236. Similarly, Labor Code section 6404 provides as follows:

28 237. No employer shall occupy or maintain any place of employment that is not safe and

1 healthful.

2 238. In addition to the above, Labor Code section 6403 requires that employees provide
3 safety devices to its employees. Labor Code section 6403 states:

4 239. No employer shall fail or neglect to do any of the following:

5 240. (a) To provide and use safety devices and safeguards reasonably adequate to render
6 the employment and place of employment safe.

7 241. (b) To adopt and use methods and processes reasonably adequate to render the
8 employment and place of employment safe.

9 242. (c) To do every other thing reasonably necessary to protect the life, safety, and health
10 of employees.

11 243. Similarly, Labor Code section 6406(d) states the following:

12 244. No person shall do any of the following ... (d) Fail or neglect to do every other thing
13 reasonably necessary to protect the life, safety, and health of employees.

14 245. Finally, Labor Code section 6407 provides:

15 246. Every employer and every employee shall comply with occupational safety and
16 health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations,
17 and orders pursuant to this division which are applicable to his own actions and conduct.

18 247. Moreover, Labor Code section 6409.6 sets forth the actions an employer (or
19 representative of employer) must take within one business day of receiving notice of potential
20 exposure to COVID-19, including but not limited to employee-notice and reporting requirements.

21 248. At all relevant times, DEFENDANTS employed PLAINTIFF and Aggrieved
22 Employees subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times,
23 DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and
24 safeguards and of failing to adopt and use practices, means, methods, operations, and/or processes
25 which are reasonably adequate to render such employment and place of employment safe and
26 healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times
27 DEFENDANTS had and have a policy and practice of requiring or permitting employees to go or
28 be in in any employment or place of employment which is not safe and healthful, pursuant to Labor

1 Code section 6402. At all relevant times, DEFENDANTS had and have a policy and practice of
2 failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render
3 the employment and place of employment safe; adopt and use methods and processes reasonably
4 adequate to render the employment and place of employment safe; and do every other thing
5 reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code
6 section 6403.

7 249. PLAINTIFF is informed and believes and thereon alleges that these failures include,
8 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or
9 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to
10 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
11 conditions between PLAINTIFF and/or other Aggrieved Employees.

12 250. At all relevant times, DEFENDANTS had a policy and practice of failing to give
13 sufficient, adequate and proper notice to PLAINTIFF and/or other Aggrieved Employees of the
14 COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace
15 exposure from a qualifying individual as required by Labor Code section 6409.6. PLAINTIFF is
16 informed and believes that numerous employees contracted COVID-19 during the relevant time
17 periods, but that DEFENDANTS failed to provide notice to employees. Based on further
18 information and belief, DEFENDANTS do not or did not keep adequate records of written
19 notifications required in subdivision (a) for a period of at least three years.

20 251. At all relevant times, DEFENDANTS had and have a policy and practice of failing
21 within one business day after DEFENDANTS or a representative of DEFENDANTS received notice
22 of potential exposure to COVID-19 to provide written notice to PLAINTIFF, other Aggrieved
23 Employees and/or their exclusive representatives, who were on the premises at the same worksite
24 as a qualifying individual who was within the infectious period that they may have been exposed to
25 COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and
26 practice of failing within one business day after DEFENDANTS or a representative of EMLOYER
27 received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other Aggrieved
28 Employees who were on the premises at the same worksite as the qualifying individual within the

1 infectious period and the exclusive representative, if any, with information regarding COVID-19-
2 related benefits to which the employee may be entitled under applicable federal, state or local laws,
3 including but not limited to, workers' compensation, and options for exposed employees, including
4 COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or
5 negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the
6 employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and
7 6432.

8 252. At all relevant times, DEFENDANTS had and have a policy and practice of failing
9 within one business day after DEFENDANTS or a representative of DEFENDANTS received a
10 notice of potential exposure to COVID-19 to notify PLAINTIFF and other Aggrieved Employees
11 who were on the premises at the same worksite as the qualifying individual within the infectious
12 period, and the employers of the subcontracted employees who were on the premises at the same
13 worksite as the qualifying individual within the infectious period and the exclusive representative,
14 if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of
15 the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per
16 the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated,
17 without limitation, Labor Code sections 6409.6 and 6432.

18 253. At all relevant times, DEFENDANTS had and have a policy and practice of failing
19 to notify the local public health agency in the jurisdiction of the worksite of the names, number,
20 occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as
21 defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed
22 health care provider; a COVID-19 related order to isolate provided by a public health official; or
23 died due to COVID-19, in the determination of a county public health department or per inclusion
24 in the COVID-19 statistics of a county. As such, DEFENDANTS violated, without limitation,
25 Labor Code sections 6409.6 and 6432.

26 254. PLAINTIFF is informed and believes , and based thereon alleges that
27 DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and
28 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule

1 for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
2 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
3 blowers; and a sufficient number of toilets to be used by each of sex of employee.

4 255. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS
5 violated the Labor Code sections described herein, including without limitation, for failure to:
6 furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to
7 employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other
8 Aggrieved Employees, who were on the premises at the same worksite as a qualifying individual
9 who was within the infectious period that they may have been exposed to COVID-19 pursuant to
10 California and local laws.

11 256. Based on information and belief, DEFENDANTS failed to protect Aggrieved
12 Employees from exposure to COVID-19 due to, including but not limited to, failing to
13 maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address
14 hazards related to the COVID-19 virus.

15 257. As such, DEFENDANTS failed to comply with the occupational safety and health
16 standards, failed to do everything reasonably necessary to protect the health and safety of
17 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
18 necessary to maintain a safe and healthful workplace.

19 258. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
20 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
21 is subject to civil penalties.

22 259. Under the provisions of PAGA and the above mentioned Labor Code sections,
23 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
24 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
25 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 6400-6404, 6406-6407, 6409.6, 6432 and all applicable
26 Wage Orders as well as all interpretations of these laws by California Courts and administrative
27 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
28 the following penalties:

- 1 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
2 relevant California Labor Code provisions listed herein only if permitted by the
3 PAGA statute, pursuant to Labor Code section 2699(a); and
4 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
5 violations without a civil penalty recoverable under the PAGA, all in the default
6 amounts provided by Labor Code section 2699(f).
7 c. The proper measure of penalties under PAGA is the number of violations,
8 whether those violations were committed as against PLAINTIFF or any
9 Aggrieved Employee, whether a party to this action or not.

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

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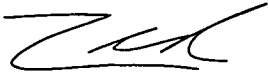
PRAYER FOR RELIEF

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

- 1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to Aggrieved Employees);
- 2. For an order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 3. For reasonable attorney’s fees and costs of suit; and
- 4. For such other and further relief that the Court deems just and proper.

Dated: August 7, 2023

CROSNER LEGAL, PC

By: 
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BENSON PAI