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TAMIR QADREE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

TAMIR QADREE, as an Aggrieved
Employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

vs.

ADT LLC, a Delaware limited liability
company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 20CV373973

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Tamir Qadree, as an Aggrieved Employee and on behalf of all other non-party
2 Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee (excluding retail banking employees) and who received at least one wage statement,
9 and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of
10 the Labor Code or any provision regulating hours and days of work in the applicable Industrial
11 Welfare Commission (“IWC”) Wage Order were committed, as set forth in this complaint, at
12 any time between one year prior to the filing of the pre-filing written notice to the Labor and
13 Workforce Development Agency (“LWDA”) in this case on March 16, 2020, until judgment
14 (“non-party Aggrieved Employees”). Plaintiff’s share of damages, penalties, and other relief
15 sought in this action does not exceed \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is also proper in this Court, because Defendants employ persons in this
3 county, and thus a substantial portion of the transactions and occurrences related to this action
4 occurred in this county.

5 5. Further, venue is proper in this Court because Defendants are non-California
6 citizens and have their principal place of business in Florida, and because they have not filed a
7 statement with the California Secretary of State designating a county in which they maintain a
8 principal place of business in accordance with California Corporations Code sections 16959
9 and 18200. Cal. Code Civ. P. § 395.2. Thus, Defendants have no right to any particular
10 venue and Plaintiff may file this complaint in any county in California. *See Juneau Spruce*
11 *Corp. v. International Longshoremen's & Warehousemen's Union*, 37 Cal.2d 760, 763-764
12 (1951); *see also, Easton v. Sup.Ct. (Schneider Bros., Inc.)*, 12 Cal. App. 3d 243, 246-247
13 (1970). Cal. Code Civ. P. § 395.5.

14 THE PARTIES

15 6. Plaintiff TAMIE QADREE ("Plaintiff") is a resident of Manteca, in San
16 Joaquin County, California. Defendants have employed Plaintiff as a commissions-paid Small
17 Business Sales Representative since approximately July 2014. On occasion, Defendants will
18 require Plaintiff to report to their office in San Jose, California. Throughout his employment,
19 Defendants have misclassified Plaintiff as an "Outside Salesperson" and therefore "exempt"
20 from various wage-and-hour protections, including meal and rest periods. Plaintiff typically
21 works eight (8) hours or more per day, and five (5) to six (6) days per week. Plaintiff's
22 primary job duties include, without limitation, soliciting and responding to requests from
23 small businesses in his area; responding to communications from pending and current
24 customers; attending weekly district and regional meetings; preparing reports for
25 management; securing installations of alarm systems; and providing general customer service
26 for pending and current clients.

27 7. ADT LLC was and is, upon information and belief, a Delaware limited liability
28 company, and at all times hereinafter mentioned, an employer whose employees are engaged

1 throughout this county, the State of California, or the various states of the United States of
2 America.

3 8. Plaintiff is unaware of the true names or capacities of the Defendants sued
4 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
5 amend the complaint and serve such fictitiously named Defendants once their names and
6 capacities become known.

7 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
8 were the partners, agents, owners, or managers of ADT LLC at all relevant times.

9 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
10 acts and omissions alleged herein was performed by, or is attributable to, ADT LLC and/or
11 DOES 1 through 10 (collectively, “Defendants” or “ADT”), each acting as the agent,
12 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
13 Defendants and was acting within the course and scope of such agency, employment, joint
14 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any
15 and all Defendants were in accordance with, and represent, the official policy of Defendants.

16 11. At all relevant times, Defendants, and each of them, ratified each and every act
17 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
18 and abetted the acts and omissions of each and all the other Defendants in proximately causing
19 the damages herein alleged.

20 12. Plaintiff is informed and believes, and thereon alleges, that each of said
21 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
22 omissions, occurrences, and transactions alleged herein.

23 **GENERAL ALLEGATIONS**

24 13. Defendants are a leading provider of electronic security systems such as
25 burglary protection, fire and carbon monoxide detection, cybersecurity video surveillance, and
26 other related security surveillance. Upon information and belief, Defendants maintain a
27 single, centralized Human Resources (“HR”) department at their company headquarters in
28 Boca Raton, Florida, which is responsible for the recruiting and hiring of new employees, and

1 communicating and implementing Defendants' company-wide policies, including timekeeping
2 policies and meal and rest period policies, to employees throughout California.

3 14. In particular, Plaintiff and other non-party Aggrieved Employees, on
4 information and belief, received the same standardized documents and/or written policies.
5 Upon information and belief, the usage of standardized documents and/or written policies,
6 including new-hire documents, indicate that Defendants dictated policies at the corporate level
7 and implemented them company-wide, regardless of their employees' assigned locations or
8 positions. Upon information and belief, Defendants set forth uniform policies and procedures
9 in several documents provided at an employee's time of hire.

10 15. Upon information and belief, Defendants maintain a centralized Payroll
11 department at their company headquarters in Boca Raton, Florida, which processes payroll for
12 all employees working for Defendants at their various locations and jobsites in California,
13 including Plaintiff and other non-party Aggrieved Employees. Based upon information and
14 belief, Defendants issue the same formatted wage statements to all employees in California,
15 irrespective of their work locations. Upon information and belief, Defendants process payroll
16 for departing employees in the same manner throughout the State of California, regardless of
17 the manner in which each employee's employment ends.

18 16. During the relevant time period, Defendants had, and continue to have, a policy
19 and/or practice of classifying commissions-paid employees, including, but not limited to,
20 Small Business Sales Representatives, including Plaintiff and other non-party Aggrieved
21 Employees, as "outside salespersons" in an effort to avoid having to provide Plaintiff and
22 other non-party Aggrieved Employees with protections they are and were entitled to under
23 California state wage-and-hour laws.

24 17. IWC Wage Order No. 4 (2)(M) provides the conditions under which an
25 employee may be deemed exempt as a bona fide "outside salesperson." An employer must
26 prove that all of the following criteria are met for an employee to qualify for the outside
27 salesperson exemption: (1) A person 18 years of age or over, (2) who customarily and
28 regularly works more than half the working time away from the employer's place of business,

1 and (3) the working time away from the business is spent selling tangible or intangible items
2 or obtaining orders or contracts for products, services, or use of facilities.

3 18. Additionally, California courts evaluate four factors in considering a disputed
4 classification. In *Ramirez v. Yosemite Water Co.*, 20 Cal.4th 785 (1999), the court stated:

5 A trial court, in determining whether the employee is an outside
6 salesperson, must . . . inquir[e] into the *realistic* requirements of
7 the job. In so doing, the court should consider, first and foremost,
8 how the employee actually spends his or her time. But the trial
9 court should also consider whether the employee's practice
diverges from the employer's realistic expectations, whether there
was any concrete expression of employer displeasure over an
employee's substandard performance, and whether these
expressions were themselves realistic given the actual overall

10 requirements of the job. (Emphasis in original.)

11 *Id.* at 803.

12 19. Plaintiff and other non-party Aggrieved Employees were not employed in an
13 "outside salesperson" capacity within the meaning of the IWC Order No. 4 because Plaintiff
14 and other non-party Aggrieved Employees did not spend more than half of their working time
15 away from Defendants' place of business selling or obtaining orders.

16 20. Rather, while Plaintiff and other non-party Aggrieved Employees spent the
17 majority of their working days and workweeks outside of Defendants' office, Plaintiff and
18 other non-party Aggrieved Employees only spent a minority of their time, approximately 20-
19 25% of their time or less, selling services to customers. In reality, Plaintiff and other non-
20 party Aggrieved Employees spent a majority of their time, approximately 75-80%, that was
21 outside of Defendants' office, performing non-sales tasks such as providing customer service,
22 attending meetings and trainings, and making phone calls. For example, Plaintiff spends
23 much of his time outside of the office speaking with existing customers about service issues,
24 installations, and cancellations. Plaintiff and other non-party Aggrieved Employees were
25 expected to perform these non-selling duties, as Defendants incentivized them through
26 commissions based on their ability to keep customers contracted for at least six (6) months
27 following an installation.

28 21. Defendants continue to employ commissions-paid employees within California

1 and, upon information and belief, continue to misclassify Small Business Sales
2 Representatives and other commissions-paid positions as exempt employees.

3 22. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
5 and advisors knowledgeable about California labor and wage law, employment and personnel
6 practices, and about the requirements of California law.

7 23. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, during the relevant time period, Defendants engaged in a systematic business
9 practice and policy of misclassifying Plaintiff and other non-party Aggrieved Employees as
10 exempt from the requirements of the California Labor Code and the applicable IWC Wage
11 Orders. As mentioned above, the majority of Plaintiff's and other non-party Aggrieved
12 Employees' working time outside of the office was spent performing non-sales-related tasks.
13 Defendants willfully, knowingly and intentionally misclassified Plaintiff and other non-party
14 Aggrieved Employees and falsely represented to Plaintiff and other non-party Aggrieved
15 Employees that they were properly classified, all in order to avoid paying wages and to
16 increase Defendants' profits.

17 24. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
18 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
19 were not recorded.

20 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that they were obligated to separately compensate Plaintiff and other non-
22 party Aggrieved Employees for rest periods and other nonproductive time when paying them
23 on a piece-rate or commission basis at their regular rate of pay. In violation of California law,
24 Defendants failed to separately compensate Plaintiff and other non-party Aggrieved
25 Employees for rest periods and other nonproductive time.

26 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 receive at least minimum wages for compensation and that they were not receiving at least

1 minimum wages for work that was required to be done off-the-clock. In violation of the
2 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
3 least minimum wages for work done off-the-clock.

4 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
7 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
8 (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were
9 not provided with all meal periods or payment of one (1) additional hour of pay at their
10 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
11 period.

12 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
15 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
16 and permitted to take a compliant rest period. In violation of the California Labor Code,
17 Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take
18 compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
19 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
20 they were not authorized and permitted to take a compliant rest period.

21 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
23 receive complete and accurate wage statements in accordance with California law. In
24 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
25 were not provided complete and accurate wage statements.

26 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that they had a duty to maintain accurate and complete payroll records in
28 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,

1 and intentionally failed to do so.

2 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that other non-party Aggrieved Employees were entitled to timely
4 payment of all wages earned upon termination of employment. In violation of the California
5 Labor Code, other non-party Aggrieved Employees did not receive payment of all wages due,
6 including, but not limited to, minimum wages, compensation for rest periods and other
7 nonproductive time, and/or meal and rest period premiums, within permissible time periods.

8 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 timely payment of wages during their employment. In violation of the California Labor Code,
11 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
12 including, but not limited to, minimum wages, compensation for rest periods and other
13 nonproductive time, and/or meal and rest period premiums, within permissible time periods.

14 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
16 and expenses Plaintiff and other non-party Aggrieved Employees incurred obtaining
17 mandatory physical examinations and/or drug tests, but willfully, knowingly, and intentionally
18 failed to do so.

19 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
21 payment of wages as designated by statute. In violation of the California Labor Code,
22 Defendants secretly paid Plaintiff and other non-party Aggrieved Employees lower wages that
23 required by statute while purporting to pay them proper wages.

24 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 receive full reimbursement for all business-related expenses and costs they incurred during the
27 course and scope of their employment and that they did not receive full reimbursement of
28 applicable business-related expenses and costs incurred.

1 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants knew or should have known that Defendants had a duty to provide
3 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms
4 of their employment with Defendants as required by the California Wage Theft Prevention
5 Act, but willfully, knowingly, and intentionally failed to do so.

6 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, Defendants knew or should have known that they had a duty to compensate
8 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
9 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
10 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
11 that they were properly denied wages, all in order to increase Defendants' profits.

12 **PAGA REPRESENTATIVE ALLEGATIONS**

13 38. At all times herein set forth, PAGA provides that any provision of law under
14 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
15 assessed and collected by the LWDA for violations of the California Labor Code and
16 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
17 civil action brought on behalf of themselves and other current or former employees pursuant
18 to procedures outlined in California Labor Code section 2699.3.

19 39. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
20 person who was employed by the alleged violator and against whom one or more of the
21 alleged violations was committed."

22 40. Plaintiff and other current and former employees of Defendants are "aggrieved
23 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
24 or former employees and one or more of the alleged violations were committed against them.

25 41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
26 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
27 following requirements have been met:

28 (a) The aggrieved employee or representative shall give written notice by

1 online filing with the LWDA and by certified mail to the employer of
2 the specific provisions of the California Labor Code alleged to have
3 been violated, including the facts and theories to support the alleged
4 violation.

5 (b) An aggrieved employee's notice filed with the LWDA pursuant to
6 2699.3(a) and any employer response to that notice shall be
7 accompanied by a filing fee of seventy-five dollars (\$75).

8 (c) The LWDA shall notify the employer and the aggrieved employee or
9 representative by certified mail that it does not intend to investigate the
10 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
11 the postmark date of the aggrieved employee's notice. Upon receipt of
12 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
13 (65) calendar days of the postmark date of the aggrieved employee's
14 notice, the aggrieved employee may commence a civil action pursuant
15 to California Labor Code section 2699 to recover civil penalties.

16 42. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
17 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
18 provision other than those listed in Section 2699.5 after the following requirements have been
19 met:

20 (a) The aggrieved employee or representative shall give written notice by
21 online filing with the LWDA and by certified mail to the employer of
22 the specific provisions of the California Labor Code alleged to have
23 been violated (other than those listed in Section 2699.5), including the
24 facts and theories to support the alleged violation.

25 (b) An aggrieved employee's notice filed with the LWDA pursuant to
26 2699.3(c) and any employer response to that notice shall be
27 accompanied by a filing fee of seventy-five dollars (\$75).

28 (c) The employer may cure the alleged violation within thirty-three (33)

1 calendar days of the postmark date of the notice sent by the aggrieved
2 employee or representative. The employer shall give written notice
3 within that period of time by certified mail to the aggrieved employee or
4 representative and by online filing with the LWDA if the alleged
5 violation is cured, including a description of actions taken, and no civil
6 action pursuant to Section 2699 may commence. If the alleged violation
7 is not cured within the 33-day period, the aggrieved employee may
8 commence a civil action pursuant to Section 2699.

9 43. On March 16, 2020, Plaintiff provided written notice by online filing to the
10 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
11 Code alleged to have been violated, including facts and theories to support the alleged
12 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
13 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
14 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
15 Plaintiff PAGA Case Number LWDA-CM-778512-20. A true and correct copy of Plaintiff's
16 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

17 44. As of the filing date of this complaint, over 65 days have passed since Plaintiff
18 sent the notice described above to the LWDA, and the LWDA has not responded that it
19 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

20 45. Thus, Plaintiff has satisfied the administrative prerequisites under California
21 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
22 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 223, 226(a), 226.2,
23 226.7, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

24 46. Labor Code section 558(a) provides "[a]ny employer or other person acting on
25 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
26 provision regulating hours and days of work in any order of the Industrial Welfare
27 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
28 dollars (\$50) for each underpaid employee for each pay period for which the employee was

1 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
2 underpaid employee for each pay period for which the employee was underpaid” Labor
3 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
4 to any other civil or criminal penalty provided by law.”

5 47. Defendants, at all times relevant to this complaint, were employers or persons
6 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
7 rights by violating various sections of the California Labor Code as set forth above.

8 48. As set forth below, Defendants have violated numerous provisions of both the
9 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
10 Order.

11 49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
12 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
13 private attorney general, seeks assessment and collection of civil penalties for himself, all
14 other aggrieved employees, and the State of California against Defendants for violations of
15 California Labor Code sections 201, 202, 203, 204, 222.5, 223, 226(a), 226.2, 226.7, 512(a),
16 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

17 **FIRST CAUSE OF ACTION**

18 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

19 **(Against all Defendants)**

20 50. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 51. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
23 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
24 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
25 223, 226(a), 226.2, 226.7, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1198, 2802, and
26 2810.5. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to
27 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,
28 including sections 516, 1182.12, 2810.5.

1 52. Defendants' conduct, as alleged herein, violates numerous sections of the
2 California Labor Code, including, but not limited to, the following:

- 3 (a) Violation of Labor Code section 226.2 for Defendants' failure to
4 separately compensate Plaintiff and other non-Aggrieved Employees for
5 rest periods and other nonproductive time as set forth below;
- 6 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
7 applicable IWC wage order for Defendants' failure to compensate
8 Plaintiff and other non-party Aggrieved Employees with at least
9 minimum wages for all hours worked as set forth below;
- 10 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
11 applicable IWC wage order for Defendants' failure to provide Plaintiff
12 and other non-party Aggrieved Employees with meal periods, as set
13 forth below;
- 14 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
15 IWC wage order for Defendants' failure to authorize and permit
16 Plaintiff and other non-party Aggrieved Employees to take rest periods,
17 as set forth below;
- 18 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
19 wage order for failure to provide accurate and complete wage statements
20 to Plaintiff and other non-party Aggrieved Employees, as set forth
21 below;
- 22 (f) Violations of Labor Code sections 1174(d), 1198, and the applicable
23 IWC wage order for failure to maintain payroll records as set forth
24 below;
- 25 (g) Violation of Labor Code section 204 for failure to pay all earned wages
26 during employment as set forth below;
- 27 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
28 earned wages upon termination as set forth below;

- (i) Violation of Labor Code section 222.5 for failure to pay for costs of mandatory physical exams and/or drug testing as set forth below;
- (j) Violation of Labor Code section 223 for secret payment of a lower wage as set forth below;
- (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide notice of material terms of employment as set forth below.

**FAILURE TO SEPARATELY COMPENSATE FOR REST PERIODS AND OTHER
NONPRODUCTIVE TIME**

VIOLATION OF LABOR CODE § 226.2

53. At all relevant times herein, California Labor Code section 226.2 requires employers that utilize a piece-rate compensation plan to separately compensate employees for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates. Labor Code section 226.2 further requires that employers provide employees compensated on a piece-rate basis with itemized statements stating the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period, and the total hours of other nonproductive time, as specified, the rate of compensation, and the gross wages paid for that time during the pay period.

54. Under California law, employers who pay employees on a commission basis must separately compensate them for rest and recovery periods and other nonproductive time at or above specified minimum hourly rates. *Vaquero v. Stoneledge Furniture, LLC*, 9 Cal.App.5th 98, 108 (2017).

55. During the relevant time period, Defendants willfully failed to pay all wages, including compensation for rest periods and other nonproductive time or minimum wages, owed to Plaintiff and other non-party Aggrieved Employees, because Defendants

1 misclassified Plaintiff and other non-party Aggrieved Employees. Defendants systematically
2 classified Plaintiff and other non-party Aggrieved Employees as “outside salespersons” and
3 thus “exempt” from various wage-and hour-protections, including meal and rest periods.
4 However, Plaintiff and other non-party Aggrieved Employees employed by Defendants do not
5 qualify for any such exemption, because Plaintiff and other non-party Aggrieved Employees
6 did not spend more than half of their working time away from Defendants’ place of business
7 selling or obtaining orders.

8 56. In reality, while Plaintiff and other non-party Aggrieved Employees spent the
9 majority of their working days and workweeks outside of Defendants’ office, Plaintiff and
10 other non-party Aggrieved Employees only spent a minority of their time, approximately 20-
11 25% of their time or less, selling services to customers. Plaintiff and other non-party
12 Aggrieved Employees spent a majority of their time, approximately 75-80%, that was outside
13 of Defendants’ office, performing non-sales tasks such as providing customer service,
14 attending meetings and trainings, and making phone calls. For example, Plaintiff spends
15 much of his time outside of the office speaking with existing customers about service issues,
16 installations, and cancellations. Plaintiff and other non-party Aggrieved Employees were
17 expected to perform these non-selling duties, as Defendants incentivized them through
18 commissions based on their ability to keep customers contracted for at least six (6) months
19 following an installation.

20 57. Defendants’ misclassification of Plaintiff and other non-party Aggrieved
21 Employees as “exempt” from various related wage-and-hour protections is, and was, willful,
22 intentional, unjustified, and unlawful. Because Defendants misclassified Plaintiff and other
23 non-party Aggrieved Employees as “exempt,” Defendants did not record their actual hours
24 worked and did not pay any compensation for rest periods and other nonproductive time or
25 minimum wages. As a result of Defendants’ willful misclassification of Plaintiff and other
26 non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved Employees were
27 required to perform work while they were not on the clock, and Defendants failed to pay
28 Plaintiff and other non-party Aggrieved Employees for this off-the-clock work.

1 58. During the relevant time period, Defendants adopted a company-wide
2 compensation plan whereby they have paid Plaintiff and other non-party Aggrieved
3 Employees on a commission basis for the sales of various products and services. As stated,
4 Defendants misclassified Plaintiff and other non-party Aggrieved Employees as “exempt”
5 and, for that reason, Defendants did not record their actual hours worked and did not pay them
6 for all hours that they worked. Thus, Defendants have failed to separately compensate
7 Plaintiff and other non-party Aggrieved Employees for all nonproductive time, including, but
8 not limited to, such activities as attending mandatory meetings and trainings, preparing
9 reports, and providing post-sales customer service. For example, Plaintiff and other non-party
10 Aggrieved Employees are required to attend weekly meetings that last between 2-6 hours and
11 participate in 15- to 25-minute-long conference calls to apprise management of their work
12 assignments. Plaintiff and other non-party Aggrieved Employees are also required to attend
13 mandatory trainings on new products/processes approximately once per month for 4-8 hours
14 per session. After sales are completed, Plaintiff and other non-party Aggrieved Employees are
15 also required to provide customer service for existing customers and pre-empt cancellations
16 within six (6) months of installation. Defendants have not recorded the time Plaintiff and
17 other non-party Aggrieved Employees spent attending meetings and trainings, preparing
18 reports, and providing post-sales customer service, and have not compensated them for any of
19 this nonproductive time.

20 59. In addition, Defendants had, and continue to have, a company-wide policy of
21 failing to separately pay Plaintiff and other non-party Aggrieved Employees for rest periods as
22 required by law. During the relevant time period, Defendants have never separately paid
23 Plaintiff and other non-party Aggrieved Employees paid on a commissions-only basis for rest
24 periods.

25 60. Defendants have also failed to provide Plaintiff and other non-party Aggrieved
26 Employees with itemized statements listing the total hours of all nonproductive time and total
27 hours of compensable rest periods, and other required details regarding payment for
28 nonproductive time and rest periods. Defendants further have not provided Plaintiff and other

1 non-party Aggrieved Employees with itemized statements showing the rates at which they
2 were paid for compensable nonproductive time and rest periods. Defendants' failure to
3 provide them with the requisite itemized statements violates Labor Code section 226.2.

4 61. Defendants' failure to separately compensate Plaintiff and other non-party
5 Aggrieved Employees for rest periods and other nonproductive time at or above specified
6 minimum hourly rates, as well as Defendant's failure to provide Plaintiff and other non-party
7 Aggrieved Employees with the requisite itemized wage statements, violates Labor Code
8 226.2.

9 62. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
10 recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code
11 sections 2699(a), (f)-(g).

12 **FAILURE TO PAY MINIMUM WAGES**

13 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

14 63. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
15 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
16 to be paid to employees, and the payment of a wage less than the minimum so fixed is
17 unlawful. Compensable work time is defined in Wage Order No. 4 as "the time during which
18 an employee is suffered or permitted to work for the employer, whether or not required to do
19 so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal.
20 Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

21 64. During the relevant time period, Defendants have implemented a company-
22 wide compensation plan that systematically fails to compensate Plaintiff and other non-party
23 Aggrieved Employees for all hours worked. As previously stated, Defendants classified and
24 treated Plaintiff and other non-party Aggrieved Employees as "exempt," and for that reason,
25 did not record their actual hours worked and did not pay them for all hours that they worked.
26 Specifically, Defendants have required Plaintiff and other non-party Aggrieved Employees
27 paid on a commission basis to perform other non-commission producing activities without
28 compensation. As described above, Defendants have failed to record the time spent by

1 Plaintiff and other non-party Aggrieved Employees on nonproductive time, such as attending
2 mandatory meetings and trainings, preparing reports, and providing post-sales customer
3 service, and as a result, have failed to compensate them for this time. Defendants have also
4 failed to separately pay Plaintiff and other non-party Aggrieved Employees for rest periods.

5 65. Further, Defendants maintained and implemented a company-wide policy of
6 requiring all employees to travel to a medical facility on their own time and using their own
7 personal vehicles to undergo mandatory drug testing and/or physical examinations. However,
8 Defendants did not compensate Plaintiff and other non-party Aggrieved Employees for the
9 time they spent traveling to and from the medical facilities or for the time they spent
10 undergoing testing and/or physical examinations. At all times, Defendants were in control of
11 scheduling the date and time for the testing and/or physical examinations, selecting the
12 provider or facility where the testing and/or physical examinations were to take place, and
13 determining the scope of the testing and/or physical examinations. For example, Defendants
14 gave Plaintiff strict instructions to obtain a drug test, and Plaintiff underwent the testing for
15 the sole benefit of Defendants. Plaintiff followed Defendants' instructions and drove for
16 approximately 20-25 minutes roundtrip to and from DNA & Drug Screening Services, Inc.,
17 located at 242 Meridian Ave., Ste. C in San Jose, and spent 30 minutes waiting at the medical
18 facility and undergoing the requisite testing. However, Defendants did not compensate
19 Plaintiff and other non-party Aggrieved Employees for the time they spent traveling to and
20 undergoing the mandatory drug testing and/or physical examinations.

21 66. In addition, Defendants maintain and implement a company-wide policy of
22 requiring employees to undergo fingerprint-based background checks upon hiring. This
23 requires employees to travel to a Live Scan provider or operator on their own time and using
24 their own personal vehicles, to undergo fingerprinting. For example, Plaintiff spent 2-3 hours
25 traveling to and from Defendants' office located at 2150 John Glenn Dr., Ste. 100 in Concord,
26 California, and approximately 30 minutes waiting and undergoing the fingerprinting.
27 However, Defendants did not compensate Plaintiff and other non-party Aggrieved Employees
28 for the time they spent traveling to and from the Live Scan providers or operators or for the

1 time they spent undergoing their fingerprinting.

2 67. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
3 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
4 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
5 penalties, attorney's fees, cost, and interest thereon, pursuant to Labor Code sections 2699(a),
6 (f)-(g).

7 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
8 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

9 68. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
10 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
11 non-party Aggrieved Employees' employment by Defendants.

12 69. At all relevant times herein set forth, California Labor Code section 512(a)
13 provides that an employer may not require, cause, or permit an employee to work for a period
14 of more than five (5) hours per day without providing the employee with a meal period of not
15 less than thirty (30) minutes, except that if the total work period per day of the employee is
16 not more than six (6) hours, the meal period may be waived by mutual consent of both the
17 employer and the employee. Under California law, first meal periods must start after no more
18 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
19 2012).

20 70. At all relevant times herein set forth, California Labor Code sections 226.7,
21 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
22 meal period mandated by an applicable order of the IWC.

23 71. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
24 and the applicable IWC Wage Order also require employers to provide a second meal period
25 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
26 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
27 total hours worked is no more than twelve (12) hours, the second meal period may be waived
28 by mutual consent of the employer and the employee only if the first meal period was not

1 waived.

2 72. First, Defendants had, and continue to have, a company-wide policy and/or
3 practice of discouraging and impeding employees from taking meal periods by assigning them
4 a heavy workload and pressuring them to maintain a monthly and/or weekly quota for sales,
5 which prevented Plaintiff and other non-party Aggrieved Employees from taking all timely,
6 uninterrupted meal periods to which they were entitled. Defendants also have a policy of not
7 paying commissions on contracts that are canceled within six (6) months of installation,
8 resulting in Plaintiff and other non-party Aggrieved Employees having to remain available for
9 existing customers at all times to keep them satisfied. As a result of the pressure to meet
10 targets or quotas despite the heavy workload, Plaintiff and other non-party Aggrieved
11 Employees are required to continue to perform their duties without being able to take a timely,
12 compliant meal period.

13 73. Second, Defendants, on a company-wide basis, have also systematically
14 discouraged and impeded Plaintiff and other non-party Aggrieved Employees from taking
15 meal periods by failing to schedule meal periods, even though Defendants are aware that
16 employees are entitled to such meal periods. As a result of this uniform failure to schedule
17 meal periods, Plaintiff and other non-party Aggrieved Employees are not able to take
18 uninterrupted 30-minute meal periods during their shifts in which they were entitled to receive
19 a meal period. For example, during the relevant time period, Plaintiff has frequently worked
20 through his shifts without being relieved of his duties to take a meal period.

21 74. Third, during the relevant time period, Defendants have not scheduled second
22 meal periods and have no policy for permitting Plaintiff and other non-party Aggrieved
23 Employees to take second 30-minute meal periods on days that they worked in excess of ten
24 (10) hours in one day. As a result, Plaintiff and other non-party Aggrieved Employees have
25 worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute
26 meal period. Plaintiff and other non-party Aggrieved Employees did not sign valid meal
27 period waivers on days that they were entitled to meal periods and were not relieved of all
28 duties.

1 75. At all times herein mentioned, Defendants knew or should have known that, as
2 a result of these policies, Plaintiff and other non-party Aggrieved Employees have been
3 prevented from being relieved of all duties and have been required to perform some of their
4 assigned duties during meal periods. Defendants improperly classified Plaintiff and other
5 non-party Aggrieved Employees as “exempt,” and, for that reason, took no measures to
6 provide them meal periods. Defendants further knew or should have known that because they
7 misclassified Plaintiff and other non-party Aggrieved Employees, Defendants did not pay
8 Plaintiff and other non-party Aggrieved Employees meal period premium wages when meal
9 periods were late, interrupted, shortened, or missed.

10 76. Moreover, Defendants engaged in a company-wide practice and/or policy of
11 not paying all meal period premiums owed when compliant meal periods are not provided.
12 Because of Defendants’ practices and/or policies, Plaintiff and other non-party Aggrieved
13 Employees have not received premium pay for all missed, late, and interrupted meal periods.
14 Alternatively, to the extent that Defendants did pay Plaintiff and other non-party Aggrieved
15 Employees one (1) additional hour of premium pay for missed meal periods, Defendants did
16 not pay Plaintiff and other non-party Aggrieved Employees at the correct rate of pay for
17 premium wages because Defendants systematically failed to include all forms of
18 compensation, such as commissions, nondiscretionary bonuses, incentive pay, and/or other
19 forms of remuneration, in the regular rate of pay. As a result, to the extent Defendants paid
20 Plaintiff and other non-party Aggrieved Employees premium pay for missed meal periods, it
21 did so at a lower rate than required by law. As a result, Defendants failed to provide Plaintiff
22 and other non-party Aggrieved Employees compliant meal periods in violation of California
23 Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period premiums due.

24 77. Defendants’ conduct violates the applicable IWC Wage Order, and California
25 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
26 Employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon,
27 pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

28 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

78. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and other non-party Aggrieved Employees' employment by Defendants.

79. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

80. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

81. During the relevant time period, Defendants regularly have failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. Defendants have no policy of scheduling rest periods for employees, which has impeded and prevented Plaintiff and other non-party Aggrieved Employees from taking compliant rest periods. Further, as with meal periods, Defendants' company-wide practices and/or policies, including systemic misclassification of employees, and assigning a heavy workload and pressuring employees to

1 satisfy sales quotas, have prevented Plaintiff and other non-party Aggrieved Employees from
2 being relieved of all duties to take compliant rest periods. As a result, Plaintiff and other non-
3 party Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of six (6) hours,
4 and/or in excess of ten (10) hours without receiving all uninterrupted ten (10) minute rest
5 periods to which they were entitled. For example, throughout his employment, Plaintiff has
6 worked straight through his shifts without taking a full and complete 10-minute rest period.

7 82. Defendants have also engaged in a systematic, company-wide practice and/or
8 policy of not paying rest period premiums owed when rest periods are not authorized and
9 permitted. Alternatively, to the extent that Defendants did pay Plaintiff and other non-party
10 Aggrieved Employees one (1) additional hour of premium pay for missed rest periods,
11 Defendants did not pay Plaintiff and other non-party Aggrieved Employees at the correct rate
12 of pay for premium wages because Defendants failed to include all forms of compensation,
13 such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of
14 remuneration, in the regular rate of pay. As a result, Defendants denied Plaintiff and other
15 non-party Aggrieved Employees rest periods and failed to pay them rest period premium
16 wages due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

17 83. Defendants' conduct violates the applicable IWC Wage Order and California
18 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
19 are therefore entitled to recover civil penalties, attorney's fees, cost, and interest thereon,
20 pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

21 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

22 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

23 84. At all relevant times herein set forth, California Labor Code section 226(a)
24 provides that every employer shall furnish each of his or her employees an accurate and
25 complete itemized wage statement in writing, including, but not limited to, the name and
26 address of the legal entity that is the employer, the inclusive dates of the pay period, total
27 hours worked, and all applicable rates of pay.

28 85. At all relevant times, Defendants have knowingly and intentionally provided

1 Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate
2 wage statements. For example, Defendants issued uniform wage statements to Plaintiff and
3 other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total
4 hours worked; net wages earned; and all applicable hourly rates in effect during the pay period
5 and the corresponding number of hours worked at each hourly rate. Specifically, Defendants
6 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

7 86. Because Defendants did not record the time Plaintiff and other non-party
8 Aggrieved Employees spent working off the clock and failed to provide itemized statements
9 listing the total hours of all nonproductive time and total hours of compensable rest periods,
10 and other required details regarding payment for nonproductive time and rest periods (as a
11 result of misclassifying Plaintiff and other non-party Aggrieved Employees), Defendants did
12 not list the correct amount of gross wages and net wages earned by Plaintiff and other non-
13 party Aggrieved Employees in compliance with section 226(a)(1) and 226(a)(5). For the same
14 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and
15 other non-party Aggrieved Employees in violation of section 226(a)(2), and failed to list the
16 applicable hourly rates of pay in effect during the pay period and corresponding accurate
17 number of work hours worked at each hourly rate in violation of section 226(a)(9).

18 87. The wage statement deficiencies also include, without limitation, failing to list
19 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
20 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
21 only the last four digits of his or her social security number or an employee identification
22 number other than a social security number; failing to list the name and address of the legal
23 entity that is the employer; failing to list the inclusive dates of the period for which Aggrieved
24 Employees were paid; and/or failing to state all hours worked as a result of not recording or
25 stating hours worked off-the-clock.

26 88. California Labor Code section 1198 provides that the maximum hours of work
27 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
28 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he

1 employment of any employees for longer hours than those fixed by the order or under
2 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
3 Wage Order, employers are required to keep accurate time records showing when the
4 employee begins and ends each work period and meal period. During the relevant time
5 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
6 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
7 in violation of section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff
8 and other non-party Aggrieved Employees with timely, compliant second 30-minute meal
9 periods to which they were entitled, Defendants kept no records of meal start and end times
10 for second meal periods.

11 89. California Labor Code section 1174(d) provides that “[e]very person employing
12 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
13 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
14 plants or establishments at which employees are employed, payroll records showing the hours
15 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
16 applicable piece rate paid to, employees employed at the respective plants or establishments . .
17 . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants
18 willfully failed to maintain accurate payroll records for Plaintiff and other non-party
19 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
20 result of failing to record the off-the-clock hours that they worked and as a result of
21 misclassifying them.

22 90. California Labor Code section 1198 provides that the maximum hours of work
23 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
24 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
25 employment of any employees for longer hours than those fixed by the order or under
26 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage
27 Order, employers are required to keep accurate time records showing when the employee
28 begins and ends each work period and meal period. During the relevant time period,

1 Defendants failed, on a company-wide basis, to keep accurate records of work period and
2 meal period start and stop times for Plaintiff and other non-party Aggrieved Employees, in
3 violation of section 1198. Furthermore, in light of Defendants' failure to provide Plaintiff and
4 other non-party Aggrieved Employees with second 30-minute meal periods to which they
5 were entitled, Defendants kept no records of meal start and end times for second meal periods

6 91. Because Defendants failed to provide the correct net and gross wages earned,
7 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and
8 other non-party Aggrieved Employees have been prevented from verifying, solely from
9 information on the wage statements themselves, that they were paid correctly and in full.
10 Instead, Plaintiff and other non-party Aggrieved Employees have had to look to sources
11 outside of the wage statements themselves and reconstruct time records to determine whether
12 in fact they were paid correctly and the extent of underpayment, thereby causing them injury

13 92. Because Defendants' violations of 226(a) and 1174(d) were committed against
14 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
15 Employees are entitled to recover civil penalties, attorney's fees, cost, and interest thereon,
16 pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

17 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

18 **VIOLATION OF LABOR CODE SECTION 204**

19 93. This cause of action is dependent upon, and wholly derivative of, the minimum
20 wages, compensation for rest periods and other nonproductive time, and/or meal and rest
21 period premium wages that were not timely paid to Plaintiff and other non-party Aggrieved
22 Employees during their employment.

23 94. At all times relevant herein set forth, Labor Code section 204 provides that all
24 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
25 days, inclusive, of any calendar month, other than those wages due upon termination of an
26 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
27 the month during which the labor was performed.

28 95. At all times relevant herein, Labor Code section 204 provides that all wages

1 earned by any person in any employment between the sixteenth (16th) and the last day,
2 inclusive, of any calendar month, other than those wages due upon termination of an
3 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
4 month.

5 96. At all times relevant herein, Labor Code section 204 provides that all wages
6 earned for labor in excess of the normal work period shall be paid no later than the payday for
7 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
8 204 provides that the requirements of this section are deemed satisfied by the payment of
9 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
10 seven (7) calendar days following the close of the payroll period.

11 97. During the relevant time period, Defendants willfully failed to pay Plaintiff and
12 other non-party Aggrieved Employees all wages due including, but not limited to, minimum
13 wages, compensation for rest periods and other nonproductive time, and/or meal and rest
14 period premium wages, within the time periods specified by California Labor Code section
15 204.

16 98. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
17 all wages due violates Labor Code section 204. Plaintiff and other non-party Aggrieved
18 Employees are therefore entitled to recover civil penalties, attorney's fees, cost, and interest
19 thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

20 **FAILURE TO PAY WAGES UPON TERMINATION**

21 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

22 99. At all times relevant herein set forth, Labor Code sections 201, 202, and 203
23 provide that if an employer discharges an employee, the wages earned and unpaid at the time
24 of discharge are due and payable immediately, and that if an employee voluntarily leaves his
25 or her employment, his or her wages shall become due and payable not later than seventy-two
26 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
27 his or her intention to quit, in which case the employee is entitled to his or her wages at the
28 time of quitting.

100. Defendants willfully failed to pay other non-party Aggrieved Employees who are no longer employed by Defendants all their earned wages, including, but not limited to, minimum wages, compensation for rest periods and other nonproductive time, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of leaving ADT's employ in violation of California Labor Code sections 201, 202, and 203.

101. Defendants' failure to pay other non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Other non-party Aggrieved Employees are therefore entitled to recover, through Plaintiff's current representative action, civil penalties, attorney's fees, cost, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION
VIOLATION OF LABOR CODE SECTION 222.5

102. At all relevant times herein, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

103. During the relevant time period, Defendants implemented, on a company-wide basis, an employer-imposed requirement that Plaintiff and other non-party Aggrieved Employees undergo mandatory drug tests and/or physical examinations, but required them to do so at their own expense. As stated, Defendants had a company-wide policy requiring that all employees, including Plaintiff and other non-party Aggrieved Employees, travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, Defendants was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider/facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug test and/or physical examinations.

104. For example, Plaintiff was instructed by Defendants to travel to a medical facility and obtain a drug test. Plaintiff followed Defendants' instructions, traveled to the

1 facility Defendants selected, and underwent the testing and examination. Plaintiff was
2 required to travel to and from a facility selected by Defendants using his own vehicle.
3 Plaintiff followed Defendants' instructions and drove six (6) miles roundtrip to and from the
4 medical facility designated by Defendants, and then spent 30 minutes waiting at the medical
5 facility and undergoing the requisite testing. Other non-party Aggrieved Employees similarly
6 were required to travel in their own vehicles to medical facilities selected by Defendants and
7 undergo drug testing and/or physical examinations.

8 105. However, Defendants did not compensate Plaintiff and other non-party
9 Aggrieved Employees for the time they spent traveling to and from their drug tests and/or
10 physical examinations, or for the time they spent undergoing the testing and/or examinations,
11 or reimburse them for the travel expenses they incurred getting to and from the medical
12 facilities. Defendants' policy and/or practice of not paying for all costs Plaintiff and other
13 non-party Aggrieved Employees incurred obtaining mandatory drug tests and physical
14 examinations tests is in violation of California Labor Code section 222.5.

15 106. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
16 recover civil penalties, attorney's fees, cost, and interest thereon, pursuant to Labor Code
17 section 2699(a), (f)-(g)

18 **SECRET PAYMENT OF LOWER WAGES**

19 **VIOLATION OF LABOR CODE SECTION 223**

20 107. At all relevant times herein set forth, California Labor Code section 223
21 provides that it shall be unlawful for an employer to secretly pay a lower wage than that
22 designated by statute or by contract while purporting to pay legal wages.

23 108. During the relevant time period, Defendants willfully and systematically
24 misclassified Plaintiff and other non-party Aggrieved Employees as exempt from the
25 protections provided for by California wage-and-hour law. Defendants' intentional
26 misclassification of Plaintiff and other non-party Aggrieved Employees resulted in the
27 payment of less than statutorily-required wages to Plaintiff and other non-party Aggrieved
28 Employees. In misclassifying Plaintiff and other non-party Aggrieved Employees, Defendants

1 acted with the intent to deprive Plaintiff and other non-party Aggrieved Employees of
2 statutory wages, including, but not limited to, minimum wages and compensation for rest
3 periods and other non-productive time, to which they were entitled to under California law.
4 Thus, Defendants paid Plaintiff and other non-party Aggrieved Employees lower wages than
5 those they were entitled to while purporting that Plaintiff and other non-party Aggrieved
6 Employees were properly paid.

7 109. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
8 the correct designated wage, while purporting to pay legal wages, is a violation of California
9 Labor Code section 223. Plaintiff and other non-party Aggrieved Employees are therefore
10 entitled to recover civil penalties, attorney's fees, cost, and interest thereon, pursuant to
11 sections 225.5 and 2699(a), (f)-(g)

12 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

13 **VIOLATION OF LABOR CODE SECTION 2802**

14 110. At all times herein set forth, California Labor Code section 2802 provides that
15 an employer must reimburse employees for all necessary expenditures and losses incurred by
16 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
17 to prevent employers from passing off their cost of doing business and operating expenses on
18 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
19 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: "[w]hen tools or
20 equipment are required by the employer or are necessary to the performance of a job, such
21 tools and equipment shall be provided and maintained by the employer, except that an
22 employee whose wages are at least two (2) times the minimum wage provided herein may be
23 required to provide and maintain hand tools and equipment customarily required by the trade
24 or craft."

25 111. First, during the relevant time period, Defendants had, and continue to have, a
26 company-wide policy of requiring Plaintiff and other non-party Aggrieved Employees to
27 utilize their own personal cellular phones and cellular data to carry out their job duties, but
28 Defendants have failed to fully reimburse them for the costs of their work-related cellular

1 phone expenses. Plaintiff and other non-party Aggrieved Employees are required to use their
2 personal cellular phones to complete their work-related tasks, such as communicating with
3 supervisors and prospective and current customers. Although Defendants require Plaintiff and
4 other non-party Aggrieved Employees to utilize their personal cellular phones to carry out
5 their work-related responsibilities, Defendants have failed to fully reimburse them for this
6 cost.

7 112. Second, Defendants also have a company-wide policy of requiring Plaintiff and
8 other non-party Aggrieved Employees to travel in their own personal vehicles for work
9 purposes, but have failed to reimburse them for all costs of travel, including mileage. As
10 stated, Defendants have a company-wide policy of requiring Plaintiff and other non-party
11 Aggrieved Employees to travel in their own personal vehicles to medical facilities to undergo
12 mandatory drug testing and/or physical examinations and fingerprint-based background
13 checks, but did not reimburse them for their travel expenses. For example, as described
14 above, Plaintiff drove his personal vehicle 6 miles roundtrip to undergo drug testing, but was
15 not reimbursed for his mileage to and from the medical facility. Plaintiff was also required to
16 travel 110-130 miles roundtrip from his home in San Jose to obtain his mandatory fingerprint-
17 based background check in Concord, California. Although Defendants required Plaintiff and
18 other non-party Aggrieved Employees to travel to and from medical facilities and Live Scan
19 providers, Defendants failed to reimburse them for these expenses.

20 113. Third, Defendants, on a company-wide basis, have required Plaintiff and other
21 non-party Aggrieved Employees to purchase supplies that were necessary for their work tasks.
22 For example, Plaintiff was required to buy power chargers and peripherals for company-
23 provided electronic devices. Defendants failed to provide these basic supplies to Plaintiff and
24 other non-party Aggrieved Employees, forcing them to incur expenses out-of-pocket to
25 obtain the needed equipment. Defendants also failed to reimburse Plaintiff and other non-
26 party Aggrieved Employees for the costs of these supplies.

27 114. Defendants could have provided Plaintiff and other non-party Aggrieved
28 Employees with the actual tools for use on the job, such as company phones, company

1 vehicles, and supplies to be used for fulfilling work-related tasks, or Defendants could have
2 reimbursed employees for the costs of their cellular phone, supplies, travel, and mileage
3 expenses. Instead, Defendants passed these operating costs off onto Plaintiff and other non-
4 party Aggrieved Employees.

5 115. Defendants' company-wide policy and/or practice of passing on their operating
6 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
7 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and
8 other non-party Aggrieved Employees for necessary business-related expenses and costs.

9 116. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
10 recover civil penalties, attorney's fees, cost, and interest thereon, pursuant to Labor Code
11 sections 2699(a), (f), and (g).

12 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
13 **EMPLOYMENT - VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

14 117. California's Wage Theft Prevention Act was enacted to ensure that employers
15 provide employees with basic information material to their employment relationship at the
16 time of hiring, and to ensure that employees are given written and timely notice of any
17 changes to basic information material to their employment. Codified at California Labor
18 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
19 employer must provide written notice to employees of the rate(s) of pay and basis thereof,
20 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
21 any rates for overtime, the regular payday designated by the employer, and any allowances'
22 claims as part of the minimum wage, including meal or lodging allowances. Effective January
23 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement
24 that the employee may accrue and use sick leave; has a right to request and use accrued paid
25 sick leave; may not be terminated or retaliated against for using or requesting the use of
26 accrued paid sick leave; and has the right to file a complaint against an employer who
27 retaliates.

28 118. During the relevant time period, Defendants failed to provide written notice to

1 Plaintiff and other non-party Aggrieved Employees that lists all the requisite information set
2 forth in Labor Code section 2810.5(a)(1)(A)-(C), on a company-wide basis.

3 119. Defendants' failure to provide Plaintiff and other non-party Aggrieved
4 Employees with written notice of basic information regarding their employment with
5 Defendants is in violation of Labor Code section 2810.5. Plaintiff and other non-party
6 Aggrieved Employees are therefore entitled to recover civil penalties, attorney's fees, costs,
7 and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

8 **REQUEST FOR JURY TRIAL**

9 Plaintiff requests a trial by jury.

10 **PRAYER FOR RELIEF**

11 Plaintiff, on behalf of all other non-party Aggrieved Employees and the State of
12 California, prays for relief and judgment against Defendants, jointly and severally, as follows:

13 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
14 (\$25,000).

15 **As to the First Cause of Action**

16 2. That the Court declare, adjudge and decree that Defendants violated the
17 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
18 226.2 (by failing to separately compensate for rest periods and other nonproductive time);
19 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours
20 worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and
21 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by
22 failing to provide accurate wage statements and maintain accurate payroll records); 201, 202,
23 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay
24 all earned wages during employment); 222.5 (by failing to pay the costs of mandatory drug
25 testing and/or physical examinations); 223 (by secretly paying wages lower than required by
26 statute); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide
27 notice of material terms of employment);

28 3. For civil penalties pursuant to California Labor Code sections 210, 225.5,

1 226.3, 256, 558, 1174.5, and/or 2699(a), (f) and (g), for violations of California Labor Code
2 sections 201, 202, 203, 204, 222.5, 223, 226(a), 226.2, 226.7, 512(a), 516, 558(a), 1174(d),
3 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

4 4. For attorneys' fees and costs pursuant to California Labor Code section
5 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
6 Labor Code sections 201, 202, 203, 204, 222.5, 223, 226(a), 226.2, 226.7, 512(a), 516, 558(a),
7 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

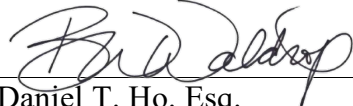
8 5. For pre-judgment and post-judgment interest as provided by law; and

9 6. For such other and further relief as the Court may deem equitable and
10 appropriate.

11
12 Dated: November 24, 2020

Respectfully submitted,

13 DANIEL T. HO & ASSOCIATES, P.C.

14
15 By: 

Daniel T. Ho, Esq.
Brooke W. Waldrop, Esq.

17 Attorneys for Plaintiff
18 TAMIR QADREE
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