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Individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

Beniyam Kebede; Alain Tsai; and Monica I.
Pazmino, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

Wrike, Inc.; and Does 1 through 25,

Defendants.

Case No.: 20CV366599

**THIRD AMENDED CLASS ACTION
[Cal. Code Civ. Proc. § 382] AND
REPRESENTATIVE ACTION [Labor
Code §§ 2698, *et seq.*] COMPLAINT**

1. Failure to Pay Minimum Wages (Lab. Code §§ 1194, 1197.1 and IWC Order 4-2001, § 4);
2. Failure to Pay Overtime Wages (Lab. Code § 510 and IWC Wage Order 4-2001, § 3);
3. Failure to Provide Meal Periods (Lab. Code § 512 and IWC Wage Order 4-2001, § 11);
4. Failure to Provide Rest Breaks (Lab. Code § 226.7 and IWC Wage Order 4-2001, § 12);
5. Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226 and IWC Wage Order 4-2001, § 7);

6. Failure to Reimburse Business Expenses (Lab. Code § 2802 and IWC Wage Order 4-2001, § 9);
7. Failure to Timely Pay Wages Due During Employment (Lab. Code § 204 and IWC Wage Order 4-2001, § 4);
8. Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 201, 202, 203);
9. Violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200-17208); and
10. Civil Penalties Pursuant to the PAGA (Labor Code §§ 2698, *et seq.*)

Jury Trial Demanded

Plaintiffs BENIYAM KEBEDE, ALAIN TSAI, and MONICA I. PAZMINO (“Plaintiffs”), on behalf of themselves, and all others similarly situated, and as representatives of the State of California and the California Labor and Workforce Development Agency (“LWDA”), complain and allege as follows:

I.

INTRODUCTION

1. Plaintiffs bring this class action pursuant to California Code of Civil Procedure section 382 and representative action pursuant to the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* (“PAGA”) against Defendants Wrike, Inc. (“Defendant Wrike”), and Does 1-25 (hereinafter collectively referred to as “Defendants”), as individuals and on behalf of all others similarly situated and all other aggrieved current and former employees of Defendants for: failure to pay all minimum and overtime wages for all hours worked, failure to provide off-duty meal and rest periods, failure to reimburse business expenses, failure to provide accurate itemized wage statements, failure to timely pay all wages due during employment, failure to timely pay all wages due upon separation of employment, and restitution for unfair business practices in violation of Business and Professions Code sections 17200-17208, and for civil penalties pursuant to the PAGA.

2. This class and representative action is within the Court’s jurisdiction under California Labor Code sections 201-203, 204, 210, 226, 226.7, 510, 512, 1182.12, 1194,

1 1194.2, 1197, 1197.1, 1198, 2800, 2802, the California Industrial Welfare Commission's
2 ("IWC") Wage Orders, the California Unfair Competition Law (the "UCL"), codified at
3 California Business and Professions Code sections 17200-17208, and under the PAGA.

4 3. This Complaint challenges systemic illegal employment practices resulting in
5 violations of the California Labor Code and Business and Professions Code against employees
6 of Defendants.

7 4. Plaintiffs are informed and believe and based thereon allege that Defendants
8 jointly and severally have acted intentionally and with deliberate indifference and conscious
9 disregard to the rights of all employees by failing to pay overtime and minimum wages for all
10 hours worked, failing to provide off-duty meal and rest breaks, failing to reimburse all
11 business expenses, failing to provide accurate itemized wage statements, and failing to pay all
12 wages due during and upon termination.

13 5. Plaintiffs are informed and believe and based thereon allege that Defendants
14 have engaged in, among other things a system of willful violations of the California Labor
15 Code, Business and Professions Code, and applicable IWC Wage Orders by creating and
16 maintaining policies, practices, and customs that knowingly deny employees the above stated
17 rights and benefits.

18 6. The policies, practices, and customs of Defendants described above and below
19 have resulted in unjust enrichment of Defendants and an unfair business advantage over
20 businesses that routinely adhere to the strictures of the California Labor Code and the
21 California Business and Professions Code.

22 7. Plaintiffs have given notice of these claims to the LWDA seeking intervention.
23 As there has been no intervention within 65 days of Plaintiffs' written notice to the LWDA,
24 Plaintiffs assert claims for civil penalties as representatives for and on behalf of the State of
25 California in a representative capacity, as provided by the PAGA to the extent permitted by
26 law, as aggrieved employees who suffered one or more of the alleged violations during all or
27 a significant part of the applicable liability period, or proposed "PAGA Period" (which is
28

1 defined as any time from one year prior to April 6, 2020.¹)

2 8. A true and correct copy of Plaintiffs' August 18, 2020 PAGA notice showing
3 compliance with Labor Code section 2699.3 is attached hereto as Exhibit 1 and demonstrates
4 that Plaintiffs are aggrieved employees and have standing to bring a representative action on
5 behalf of the State of California and the LWDA as private attorney generals. Since no notice
6 of cure has been provided by Defendant WRIKE, INC., nor has the LWDA indicated that it
7 intends to investigate within the proscribed 65-day period from the date of mailing of the
8 notice, Plaintiffs have asserted PAGA claims herein and bring this action as a "Representative
9 Action" as specifically permitted and authorized by Labor Code section 2699.3(a)(2)(C).

10 **II.**

11 **PARTIES, JURISDICTION AND VENUE**

12 9. On or about August of 2019 until on or about January 20, 2020, Plaintiff
13 Beniyam Kebede worked for Defendants as an inside salesperson. On or about October of
14 2018 until on or about July 29, 2020, Plaintiff Alain Tsai worked for Defendants as an inside
15 salesperson. On or about October of 2019 until or about April 1, 2020, Plaintiff Monica I.
16 Pazmino worked for Defendants as an inside salesperson. Plaintiffs were and are the victims
17 of the policies, practices, and customs of Defendants complained of in this action in ways that
18 have deprived them of the rights guaranteed by California Labor Code sections 201-203, 204,
19 210, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, and 2802,
20 the applicable IWC Wage Order, and the UCL.

21 10. Venue as to each Defendant is proper in this judicial district, pursuant to Code
22 of Civil Procedure section 395. Defendants conduct business in Santa Clara County,
23 California, and each Defendant is within the jurisdiction of this Court for service of process
24 purposes. The unlawful acts alleged have a direct effect on Plaintiffs and those similarly
25 situated within the State of California and Santa Clara County. Defendants employ numerous
26 Class Members in Santa Clara County. There is no federal question at issue, as the issues are

27 _____
28 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix
I, Emergency Rule No. 9, and the sixty-five-day period provided by Labor Code section
2699.3(d).

1 based solely on California statutes and law, including the Labor Code, IWC Wage Orders,
2 Code of Civil Procedure, Civil Code, and Business and Professions Code.

3 11. Business and Professions Code section 17203 provides that any person who
4 engages in unfair competition may be enjoined in any court of competent jurisdiction.
5 Business and Professions Code section 17204 provides that any person, acting on his own
6 behalf, may bring an action in a court of competent jurisdiction.

7 12. The Court has jurisdiction over Plaintiffs' and other aggrieved employees'
8 claims for civil penalties under the PAGA, Labor Code sections 2698, *et seq.* Plaintiffs'
9 representative PAGA penalty claims are not subject to federal jurisdiction.

10 13. Plaintiffs are informed and believe and based thereon allege that Defendant
11 was and is a Delaware corporation doing business in the State of California providing software
12 management tools to business. Plaintiffs are informed and believe and based thereon allege
13 that Defendant maintains its headquarters in San Jose, California.

14 14. Plaintiffs do not know the true names or capacities of the Defendants sued
15 herein as Does 1 through 25, inclusive, and, for that reason, said Defendants are sued under
16 such fictitious names. Plaintiffs are informed and believe, and based thereon, allege that each
17 of said fictitious Defendants are and were responsible in some manner for the injuries
18 complained of herein. Plaintiffs will amend this Complaint to identify such fictitiously-named
19 Defendants pursuant to Code of Civil Procedure section 474 once their identities become
20 known.

21 15. The relief sought by Plaintiffs on behalf of themselves and the Class defined
22 below exceeds the minimal jurisdictional limits of the Superior Court and will be established
23 according to proof at trial. The Court has personal jurisdiction over each of the parties because
24 they are either citizens of this State, doing business in this State or otherwise have minimum
25 contacts with this State.

26 16. Venue is proper in this Court because, upon information and belief, Plaintiffs
27 worked for Defendants in this county, Defendants are headquartered in this county,
28 Defendants transact business in this county, and acts and omissions alleged herein took place

1 in this county.

2 17. Plaintiffs are informed and believe and, based thereon, allege that Defendants
3 were at all times relevant hereto members of, and engaged in, a joint venture, partnership,
4 association or common enterprise, and acting within the course and scope of, and in pursuance
5 of, said joint venture, partnership, association or common enterprise. Furthermore, Plaintiffs
6 are informed and believe and, based thereon, allege that at all times relevant hereto Defendants
7 conspired together in, aided and abetted, contributed to, and/or acted as agents or employees
8 of each other with respect to, the commission of the acts complained of herein. Defendants
9 are therefore jointly and severally liable for the injuries complained of herein.

10 **III.**

11 **GENERAL ALLEGATIONS**

12 18. California's Labor Code and Industrial Welfare Commission Wage Order 4-
13 2001 ("IWC Wage Order") requires employers, among other things, to pay wages, including
14 minimum and overtime wages for all hours worked, provide compliant meal and rest periods,
15 to furnish each employee with accurate, itemized wage statements, and to reimburse
16 employees for all expenses necessarily incurred in discharge of employment.

17 19. During all, or portions of the Class Period, Defendants classified Plaintiffs and
18 members of the Plaintiff Class as "exempt" employees. Certain commissioned inside sales
19 employees may be exempt from overtime pay in California if the employee earns more than
20 one-and-a-half times the minimum wage each workweek, and more than half of the
21 employee's compensation represents commission earnings. (*See Peabody v. Time Warner*
22 *Cable, Inc.*, (2014) 59 Cal.4th 662.) However, Plaintiffs and members of the Plaintiff Class
23 regularly did not earn more than half of their compensation in commission earnings.
24 Additionally, some or all of the compensation defined by Defendants as "commissions" that
25 was paid to members of the Plaintiff Class were not *bona fide* commissions under the Labor
26 Code. As such, Class Members do not meet the requirements to be classified as exempt under
27 the commissioned salesperson/inside salesperson exemption and should have been classified
28 as "non-exempt" employees, and afforded the protections of the California Labor Code and

1 applicable IWC Wage Order.

2 20. During all, or portions, of the Class Period, Defendants had a consistent policy
3 which did not pay Plaintiffs and members of the Plaintiff Class all wages due, including
4 minimum wages, as a result of Defendants' systematic failure to record all hours actually
5 worked by Plaintiffs and members of the Plaintiff Class, among other policies.

6 21. During all, or portions, of the Class Period, Defendants had a consistent policy
7 which did not pay Plaintiffs and members of the Plaintiff Class all wages due, including
8 overtime premium wages for hours worked in excess of 8 hours per day and/or 40 hours per
9 week, including due to Defendants' failure to record all hours actually worked by Plaintiffs
10 and members of the Plaintiff Class. During all, or portions, of the Class Period, Defendants
11 had a consistent policy of not paying all commissions earned, including overtime wages on
12 such commissions, by members of the Plaintiff Class. Similarly, commissions were routinely
13 "clawed back" in violation of the Labor Code. Additionally, commissions were not paid
14 promptly paid when earned by members of the Plaintiff Class. Finally, Defendants did not
15 have a commissions agreement that laid out in writing precisely how commissions would be
16 paid.

17 22. During all, or portions, of the Class Period, Defendants had a consistent policy
18 which did not authorize or permit Plaintiffs and members of the Plaintiff Class to receive rest
19 periods of at least ten (10) minutes per four (4) hours, or major fraction thereof, worked, and
20 failed to pay such employees one (1) hour of pay at their regular rate of compensation for each
21 workday a rest period was not authorized or permitted, as required by California wage and
22 hour laws.

23 23. Defendants had a consistent policy which did not provide Plaintiffs and
24 members of the Plaintiff Class with duty-free meal periods of at least thirty (30) minutes for
25 shifts of five hours or more, which began before the end of the fifth hour of work, and failed
26 to pay such employees one (1) hour of pay at their regular rate of compensation based on the
27 correct regular rate encompassing commission payments when applicable for each workday
28 the meal period was not provided, as required by California wage and hour laws.

24. During the Class Period, Defendants had a consistent policy of failing to reimburse Plaintiffs and members of the Plaintiffs Class for all necessary and reasonable business expenses incurred, in violation of California state wage and hour laws. Plaintiffs used their personal cell phones and home internet for work-related duties, including for communicating with customers, without reimbursement for this business expense.

25. Defendants have intentionally and willfully failed to provide Plaintiffs and members of the Plaintiff Class with complete and accurate wage statements. The deficiencies include, among other things, the failure to list the gross wages earned, net wages earned, and all hours worked. Specifically, Class Members' wage statements automatically state 86.67 hours worked for employees paid bi-monthly, but this did not always actually reflect the actual hours worked by those employees. Additionally, Class Members' wage statements did not properly detail how the commissions were calculated.

26. During all, or portions, of the Class Period, Defendants had a consistent policy of failing to pay Plaintiffs and members of the Plaintiff Class all wages and commissions due during and upon termination of employment, in violation of California state wage and hour laws.

27. On information and belief, Plaintiffs allege that Defendant applied the same policies described above to all other members of the proposed Plaintiff Class. As alleged below, these uniform policies, practices, and procedures violated California's labor laws and constituted unfair, fraudulent, or illegal business practices under Business & Professions Code sections 17200 *et seq.*

IV.

CLASS ALLEGATIONS

28. Plaintiffs bring this action pursuant to California Code of Civil Procedure section 382 on behalf of themselves and Class Members defined below. The Plaintiff Class is comprised of and defined as:

Plaintiff Class

All current and former commissioned employees who worked for Defendants in the State of California from April 6, 2016 to the date

of trial.²

29. Plaintiffs also seek to certify the following Subclass of employees:

Waiting Time Subclass

All members of the Plaintiff Class who separated their employment from Defendants from three years preceding the filing of this Action to the date the class is certified.

30. Plaintiffs also seek to certify the following Subclass:

Wage Statement Subclass:

All members of the Plaintiff Class who, within one year of the filing of this Action, received one or more itemized wage statement that did not include all wages due and/or the accurate number of hours worked.

31. Members of the Plaintiff Class and Subclasses described above will be collectively referred to as “Class Members.” Plaintiffs reserve the right to establish other or additional subclasses, or modify the Plaintiff Class or Subclasses definition, as appropriate based on investigation, discovery and specific theories of liability.

32. There exists a well-defined community of interest among the Plaintiff Class, and the Plaintiff Class is readily ascertainable.

33. The members of the Plaintiff Class are so numerous that joinder of all members in a single action would not be feasible or practical, and the amount of individual damages is not large enough to make individual lawsuits by each Class Member practical or feasible. Plaintiffs are informed and believe and based upon such information and belief allege that there are in excess of 50 members of the Plaintiff Class.

34. Plaintiffs’ claims are typical of the claims of the rest of the Plaintiff Class, and Plaintiffs and their counsel will fairly and adequately represent the interests of the Plaintiff Class.

35. Common issues of fact and/or law predominate in this action over any allegedly individual issues. Specifically, the following common questions of fact or law

² The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

1 predominate and make this action superior to individual actions:

2 (i) whether Plaintiffs and the rest of the Plaintiff Class are entitled to
3 recover damages, penalties, and other relief on the grounds that Defendants have used uniform
4 policies, practices, and procedures that have consistently violated California labor laws and
5 regulations and caused Plaintiffs and the rest of the Plaintiff Class to suffer the same or similar
6 injuries;

7 (ii) whether Defendants violated Labor Code sections 204 and 210, and
8 sections 3 and 4 of IWC Wage Order 4-2001 by failing to pay wages for all hours worked;

9 (iii) whether Defendants violated Labor Code sections 1182.12, 1194,
10 1194.2, 1197, 1197.1, and 1198 and section 4 of IWC Wage Order 4-2001 by failing to pay
11 minimum wage for all hours worked;

12 (iv) whether Defendants violated Labor Code sections 510, 1194, and 1198,
13 and section 3 of IWC Wage Order by failing to pay overtime compensation;

14 (v) whether Defendants violated Labor Code sections 226.7 and 512, and
15 section 11 of IWC Wage Order 4-2001 by failing to provide meal periods for each five hours
16 worked, and not compensating employees with one hour of pay at the employees' regular rate
17 of compensation for each workday that a meal period was not provided;

18 (vi) whether Defendants violated Labor Code section 226.7 and section 12
19 of IWC Wage Order 4-2001 by failing to provide daily rest periods of ten minutes per four
20 hours or major fraction thereof worked and by failing to compensate employees one hour's
21 wages in lieu of rest periods;

22 (vii) whether Defendants violated Labor Code section 226 and section 7 of
23 IWC Wage Order 4-2001 by failing to provide and maintain timely and accurate itemized
24 wage statements;

25 (viii) whether Defendants violated Labor Code sections 2800 and 2802 by
26 failing to indemnify Plaintiffs and members of the Plaintiff Class for all the necessary
27 expenditures or losses incurred in direct consequence of the discharge of their duties, or of
28 their obedience to the directions of their employer;

1 (ix) whether Defendants violated Labor Code sections 201-203 by failing
2 to timely pay Plaintiffs and Waiting Time Subclass Members all wages due upon termination
3 or within seventy-two (72) hours of resignation; and

4 (x) whether Defendants' practices constitute unfair, fraudulent, or illegal
5 business practices under Business and Professions Code sections 17200, *et seq.*

6 36. California labor laws under which Plaintiffs assert the following causes of
7 action on behalf of themselves and the rest of the Plaintiff Class are broadly remedial in nature.
8 These labor laws serve an important public interest in establishing minimum working
9 conditions and standards in California. They furthermore protect employees from exploitation
10 by employers who may seek to take advantage of their superior economic and bargaining
11 power in setting onerous terms and conditions of employment. The class action mechanism is
12 a particularly efficient and appropriate procedure to redress the injuries alleged herein. If each
13 employee in the Plaintiff Class were required to file an individual action, Defendants would
14 be able to use their superior financial and legal resources to gain an unfair advantage over
15 each individual Class Member. Moreover, requiring each Class Member to pursue an
16 individual action would also discourage the assertion of meritorious causes of action by
17 employees who would likely be disinclined to file such individual actions due to a justifiable
18 fear of retaliation and damage to their careers at subsequent employment.

19 37. In addition, even if feasible, individual actions by each Class Member would
20 create a substantial risk (i) of inconsistent or varying adjudications with respect to the claims
21 of each Class Member against Defendants, that in turn could establish potentially
22 incompatible standards of conduct for Defendants, and/or (ii) of adjudications with respect to
23 individual Class Members that would, as a practical matter, be dispositive of the interests of
24 the other Class Members. Furthermore, the claims of each individual Class Member are not
25 sufficiently large enough to make it economically feasible to bring each Class Member's
26 claims on an individual basis.

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28 ///

1 **VI.**

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 **(Violation of Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1,
6 and 1198, and § 4 of IWC Wage Order 4-2001)**

7 38. Plaintiffs re-allege and incorporate herein by this reference each and every
8 allegation set forth in all previous paragraphs of the Complaint.

9 39. Labor Code section 1194(a) states: “Notwithstanding any agreement to work
10 for a lesser wage, any employee receiving less than the legal minimum wage or the legal
11 overtime compensation applicable to the employee is entitled to recover in a civil action the
12 unpaid balance of the full amount of this minimum wage or overtime compensation, including
13 interest thereon, reasonable attorney’s fees, and costs of suit.”

14 40. Labor Code section 1194.2 states: “In any action under Section 98, 1193.6,
15 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum
16 wage fixed by an order of the commission or by statute, an employee shall be entitled to
17 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
18 thereon.”

19 41. Labor Code section 1194.2 provides for liquidated damages equal to
20 unlawfully unpaid minimum wages, with interest.

21 42. Labor Code section 1197 states: “The minimum wage for employees fixed by
22 the commission is the minimum wage to be paid to employees, and the payment of a less wage
23 than minimum wage so fixed is unlawful.”

24 43. Labor Code section 1197.1 states: “Any employer or other person acting either
25 individually or as an officer, agent, or employee of another person, who pays or causes to be
26 paid to any employee a wage less than the minimum fixed by an order of the commission shall
27 be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee,
28 and any applicable penalties imposed pursuant to Section 203. For any initial violation that is
intentionally committed, one hundred dollars (\$100) for each underpaid employee for each

1 pay period for which the employee is underpaid. For each subsequent violation for the same
2 specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
3 period for which the employee is underpaid regardless of whether the initial violation is
4 intentionally committed.”

5 44. Labor Code section 1198 states: “The maximum hours of work and the
6 standard conditions of labor fixed by the commission shall be the maximum hours of work
7 and the standard conditions of labor for employees. The employment of any employee for
8 longer hours than those fixed by the order or under conditions of labor prohibited by the order
9 is unlawful.”

10 45. Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of
11 the applicable Wage Order, an employer may not pay employees less than the applicable
12 minimum wage for all hours worked, and provides that an employer may not pay non-exempt
13 employees less than the applicable overtime rate for all overtime hours worked.

14 46. During the relevant time period, Defendants regularly failed to pay at least
15 minimum wage to Plaintiffs and members of the Plaintiff Class for all hours worked pursuant
16 to Labor Code sections 1194 and 1197.

17 47. Defendants’ failure to pay Plaintiffs and members of the Plaintiff Class the
18 minimum wage as required violates Labor Code sections 1194 and 1197.

19 48. As a direct result, Plaintiffs and members of the Plaintiff Class have suffered,
20 and continue to suffer, substantial losses related to the use and enjoyment of such wages,
21 including lost interest on such monies and expenses and attorney’s fees in seeking to compel
22 Defendants to fully perform their obligation under state law, all to their respective damage in
23 amounts according to proof at trial and within the jurisdictional limitations of this Court.

24 49. Defendants’ unlawful acts deprived Plaintiffs and members of the Plaintiff
25 Class Plaintiffs seek to represent of minimum wages in amounts to be determined at trial, and
26 they are entitled to recover these amounts, along with liquidated damages for unpaid regular
27 or minimum wages, interest, attorneys’ fees, and costs.

28 50. Plaintiffs seek to recover in a civil action the unpaid balance of the full amount

1 of the unpaid wages resulting from Defendants' minimum wage violations including interest
2 thereon, reasonable attorney's fees and costs of suit, penalties, and liquidated damages to the
3 fullest extent permissible including those permitted pursuant to Labor Code sections 218.6,
4 1194, 1194.2, and 1197.1, and Code of Civil Procedure section 1021.5. Plaintiffs, on behalf
5 of themselves and the members of the Plaintiff Class, request relief as described below.

6 **SECOND CAUSE OF ACTION**
7 **FAILURE TO PAY OVERTIME COMPENSATION**
8 **(Violation of Cal. Labor Code §§ 510, 1194 and 1198, and § 3 of IWC Wage Order 4-2001)**

9 51. Plaintiffs re-allege and incorporate herein by this reference each and every
10 allegation set forth in all previous paragraphs of the Complaint.

11 52. Labor Code section 1198 and the applicable IWC Wage Order provide that it
12 is unlawful to employ persons without compensating them at a rate of pay either one and one-
13 half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
14 or days worked by the person on a daily or weekly basis.

15 53. Specifically, section 3 of IWC Wage Order 4-2001 provides that Defendants
16 are and were required to pay overtime compensation to Plaintiffs and members of the Plaintiff
17 Class at the rate of one and one-half times (1½) their regular rate of pay when working and
18 for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
19 workweek and for the first eight (8) hours of work on the seventh day of work in a workweek.

20 54. Section 4 of IWC Wage Order 4-2001 further provide that Defendants are and
21 were required to pay overtime compensation to Plaintiffs and members of the Plaintiff Class
22 at a rate of two times their regular rate of pay when working and for all hours worked in excess
23 of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of work in a
24 workweek.

25 55. Labor Code section 510 codifies the right to overtime compensation at one and
26 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
27 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
28 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours

1 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
2 seventh day of work in a workweek.

3 56. Labor Code section 510 and IWC Wage Order 4-2001 provide that
4 employment of more than six days in a workweek is only permissible if the employer pays
5 proper overtime compensation as set forth herein.

6 57. During the relevant time period, Defendants failed to pay Plaintiffs and
7 members of the Plaintiff Class overtime wages for all overtime hours worked when Plaintiffs
8 and members of the Plaintiff Class worked in excess of eight (8) hours in a day, forty (40)
9 hours in a week, and/or for a seventh consecutive day of work in a workweek, or when
10 Plaintiffs and members of the Plaintiff Class worked in excess of twelve (12) hours in a day
11 and/or in excess of eight (8) hours on the seventh day of work in a work week.

12 58. In violation of state law, Defendants knowingly and willfully refused to
13 perform their obligations and compensate Plaintiffs and Class Members for all wages earned
14 and all hours worked.

15 59. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of
16 overtime and double time compensation, as required by California law, violates the provisions
17 of Labor Code sections 510 and 1198, and is therefore unlawful.

18 60. As a direct result, Plaintiffs and members of the Plaintiff Class have suffered,
19 and continue to suffer, substantial losses related to the use and enjoyment of such wages,
20 including lost interest on such monies and expenses and attorney's fees in seeking to compel
21 Defendants to fully perform their obligation under state law, all to their respective damage in
22 amounts according to proof at trial and within the jurisdictional limitations of this Court.

23 61. Defendants' unlawful acts deprived Plaintiffs and members of the Plaintiff
24 Class Plaintiffs seek to represent of minimum and/or overtime wages in amounts to be
25 determined at trial, and they are entitled to recover these amounts, along with liquidated
26 damages for unpaid regular or minimum wages, interest, attorneys' fees, and costs.

27 62. Pursuant to Labor Code section 1194, Plaintiffs and members of the Plaintiff
28 Class are entitled to recover their unpaid overtime and double time compensation as well as

1 interest, costs, and attorneys' fees.

2 **THIRD CAUSE OF ACTION**
3 **FAILURE TO PROVIDE MEAL PERIODS**
4 **(Violation of Cal. Labor Code §§ 226.7 and 512, and § 11 of IWC Wage Order 4-2001)**

5 63. Plaintiffs re-allege and incorporate herein by this reference each and every
6 allegation set forth in all previous paragraphs of the Complaint.

7 64. Labor Code section 226.7 provides that no employer shall require an employee
8 to work during any meal period mandated by the IWC Wage Orders.

9 65. Section 11 of IWC Wage Order 4-2001 states: “[n]o employer shall employ
10 any person for a work period of more than five (5) hours without a meal period of not less
11 than 30 minutes, except that when a work period of not more than six (6) hours will complete
12 the day’s work the meal period may be waived by mutual consent of the employer and the
13 employee.”

14 66. Labor Code section 512(a) provides that an employer may not require, cause,
15 or permit an employee to work for a period of more than five (5) hours per day without
16 providing the employee with an uninterrupted meal period of not less than thirty (30) minutes,
17 except that if the total work period per day of the employee is not more than six (6) hours, the
18 meal period may be waived by mutual consent of both the employer and the employee.

19 67. Labor Code section 512(a) also provides that an employer may not employ an
20 employee for a work period of more than ten (10) hours per day without providing the
21 employee with a second meal period of not less than thirty (30) minutes, except that if the
22 total hours worked is no more than twelve (12) hours, the second meal period may be waived
23 by mutual consent of the employer and the employee only if the first meal period was not
24 waived.

25 68. During the relevant time period, Plaintiffs and members of the Plaintiff Class
26 did not receive compliant meal periods for working more than five (5) and/or ten (10) hours
27 per day. Furthermore, Defendants failed to inform Plaintiffs and members of the Plaintiff
28 Class of their right to meal periods and failed to record meal periods in compliance with
California law.

1 69. Labor Code section 226.7(b) and section 11 of IWC Wage Order 4-2001
2 require an employer to pay an employee one (1) additional hour of pay at the employee's
3 regular rate of compensation for each workday that a compliant meal period is not provided.

4 70. At all relevant times, Defendants failed to pay Plaintiffs and members of the
5 Plaintiff Class meal period premiums for their missed meal periods pursuant to Labor Code
6 section 226.7(b) and section 11 of the applicable IWC Wage Order.

7 71. As a result of Defendants' failure to pay Plaintiffs and members of the Plaintiff
8 Class an additional hour of pay for each day a compliant meal period was not provided,
9 Plaintiffs and Class Members suffered, and continue to suffer, a loss of wages and
10 compensation. Because Defendants failed to provide meal periods, they are liable to Plaintiffs
11 and members of the Plaintiff Class for one hour of additional premium pay at the regular rate
12 of compensation for each workday that the meal periods were not provided, pursuant to Labor
13 Code section 226.7 and IWC Wage Order 4-2001, section 11(B).

14 72. As a direct result of Defendants' violations alleged herein, Plaintiffs and
15 members of the Plaintiff Class have suffered, and continue to suffer, substantial losses related
16 to the use and enjoyment of such wages, including lost interest on such monies and expenses
17 and attorney's fees in seeking to compel Defendants to fully perform their obligation under
18 state law, all to their respective damage in amounts according to proof at trial and within the
19 jurisdictional limitations of this Court.

20 73. Defendants' unlawful acts deprived Plaintiffs and members of the Plaintiff
21 Class Plaintiffs seek to represent of premium wages and/or other compensation in amounts to
22 be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys'
23 fees, and costs.

24 74. Plaintiffs seek to recover in a civil action the unpaid balance of the full amount
25 of the unpaid wages resulting from Defendants' meal period violations including interest
26 thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent
27 permissible including those permitted pursuant to Labor Code sections 226.7 and 512, and
28 Code of Civil Procedure section 1021.5.

75. Plaintiffs, on behalf of themselves and members of the Plaintiff Class, request relief as described below.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
(Violation of Cal. Labor Code § 226.7 and § 12 of IWC Wage Order 4-2001)

76. Plaintiffs re-allege and incorporate herein by this reference each and every allegation set forth in all previous paragraphs of the Complaint.

77. Labor Code section 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

78. Section 12 of IWC Wage Order 4-2001 states: “every 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 the “authorized 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.

79. IWC Wage Order 4-2001, section 12(B) states that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

80. Labor Code section 226.7(d) provides that a rest period mandated by state law or IWC Wage Order “shall be counted as hours worked, for which there shall be no deduction from wages.”

81. During the relevant time period, Plaintiffs and members of the Plaintiff Class did not receive a ten (10)-minute net rest period for every four (4) hours or major fraction thereof worked.

82. Labor Code section 226.7(b) and section 12 of the applicable IWC Wage Order require an employer to pay an employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

83. At all relevant times, Defendants failed to pay Plaintiffs and members of the Plaintiff Class the full rest period premium for missed or interrupted rest periods pursuant to

1 Labor Code section 226.7(b) and section 12 of the applicable IWC Wage Order.

2 84. As a direct result of Defendants' violations alleged herein, Plaintiffs and
3 members of the Plaintiff Class have suffered, and continue to suffer, substantial losses related
4 to the use and enjoyment of such wages, including lost interest on such monies and expenses
5 and attorney's fees in seeking to compel Defendants to fully perform their obligation under
6 state law, all to their respective damage in amounts according to proof at trial and within the
7 jurisdictional limitations of this Court.

8 85. Defendants' unlawful acts deprived Plaintiffs and members of the Plaintiff
9 Class Plaintiffs seek to represent of premium wages and/or other compensation in amounts to
10 be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys'
11 fees, and costs.

12 86. Plaintiffs seek to recover in a civil action the unpaid balance of the full amount
13 of the unpaid wages resulting from Defendants' rest period violations including interest
14 thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent
15 permissible including those permitted pursuant to Labor Code section 226.7 and Code of Civil
16 Procedure section 1021.5.

17 87. Plaintiffs, on behalf of themselves and members of the Plaintiff Class, request
18 relief as described below.

19 **FIFTH CAUSE OF ACTION**
20 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
21 **(Violation of Cal. Labor Code § 226 and § 7 of IWC Wage Order 4-2001)**

22 88. Plaintiffs re-allege and incorporate herein by this reference each and every
23 allegation set forth in all previous paragraphs of the Complaint.

24 89. Labor Code section 226(a) states in pertinent part: "Every employer shall,
25 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
26 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
27 separately when wages are paid by personal check or cash, an accurate itemized statement in
28 writing showing": (1) gross wages earned; (2) total hours worked by the employee, except for
any employee whose compensation is solely based on a salary and who is exempt from

1 payment of overtime under subdivision (a) of Section 515 or any applicable order of the
2 Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable
3 piece rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all
4 deductions made on written orders of the employee may be aggregated and shown as one item;
5 (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7)
6 the name of the employee and only the last four digits of his or her social security number or
7 an employee identification number other than a social security number; (8) the name and
8 address of the legal entity that is the employer; and (9) all applicable hourly rates in effect
9 during the pay period and the corresponding number of hours worked at each hourly rate by
10 the employee. The deductions made from payment of wages shall be recorded in ink or other
11 indelible form, properly dated, showing the month, day, and year, and a copy of the statement
12 and the record of the deductions shall be kept on file by the employer for at least three years
13 at the place of employment or at a central location within the State of California.”

14 90. IWC Wage Order 4-2001, section 7(A) states in relevant part that the employer
15 shall keep accurate information regarding, “(4) Total wages paid each payroll period,
16 including value of board, lodging, or other compensation actually furnished to the employee;
17 (5) Total hours worked in the payroll period and applicable rates of pay.”

18 91. Defendants have intentionally and willfully failed to provide Plaintiffs and
19 members of the Wage Statement Subclass with complete and accurate wage statements. The
20 deficiencies include, among other things, the failure to list the gross wages earned, net wages
21 earned, and all hours worked.

22 92. As a result of Defendants’ violation of California Labor Code section 226(a),
23 Plaintiffs and members of the Wage Statement Subclass have suffered injury and damage to
24 their statutorily protected rights. Specifically, Plaintiffs and members of the Wage Statement
25 Subclass have been injured by Defendants’ intentional violation of California Labor Code
26 section 226(a) because they were denied both their legal right to receive, and their protected
27 interest in receiving, accurate itemized wage statements under California Labor Code section
28 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage

1 statements, Defendants have prevented Plaintiffs and members of the Wage Statement
2 Subclass from determining if all hours worked were paid at the appropriate rate and the extent
3 of the underpayment. Plaintiffs have had to file this lawsuit in order to analyze whether in fact
4 Plaintiffs were paid correctly and the extent of the underpayment, thereby causing Plaintiffs
5 to incur expenses and lost time. Plaintiffs would not have had to engage in these efforts and
6 incur these costs had Defendants provided the accurate rate of pay. This has also delayed
7 Plaintiffs' ability to demand and recover the underpayment of wages from Defendants.

8 93. Labor Code section 226(e) states: "An employee suffering injury as a result of
9 a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
10 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
11 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
12 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000),
13 and is entitled to an award of costs and reasonable attorneys' fees."

14 94. Labor Code section 226(e)(2)(B) states: "An employee is deemed to suffer
15 injury for purposes of this subdivision if the employer fails to provide accurate and complete
16 information as required by any one or more of items (1) to (9), inclusive, of subdivision (a)
17 and the employee cannot promptly and easily determine from the wage statement alone one
18 or more of the following: (i) The amount of gross wages or net wages paid to the employee
19 during the pay period or any other information required to be provided on the itemized wage
20 statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)..." Because
21 Plaintiffs' wage statements did not include, among other things, an accurate accounting of
22 gross wages earned or the accurate total hours worked, they are deemed to have suffered
23 injury.

24 95. Defendants' violations of California Labor Code section 226(a) prevented
25 Plaintiffs and members of the Wage Statement Subclass from knowing, understanding, and
26 disputing the wages paid to them, and resulted in an unjustified economic enrichment to
27 Defendants. As a result of Defendants' knowing and intentional failure to comply with
28 California Labor Code section 226(a), Plaintiffs and members of the Wage Statement Subclass

1 have suffered an injury, the exact amount of damages and/or penalties is all in an amount to
2 be shown according to proof at trial.

3 96. Labor Code section 226(h) states: “An employee may also bring an action for
4 injunctive relief to ensure compliance with this section, and is entitled to an award of costs
5 and reasonable attorney’s fees.”

6 97. Labor Code section 226.3 states, in part: “Any employer who violates
7 subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred
8 fifty dollars (\$250) per employee per violation in an internal citation and one thousand dollars
9 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
10 to keep the records required in subdivision (a) of Section 226. The civil penalties provided for
11 in this section are in addition to any other penalty provided by law.”

12 98. As a direct result of Defendants’ violations alleged herein, Plaintiffs and
13 members of the Wage Statement Subclass have suffered, and continue to suffer, injury
14 including substantial losses related to the use and enjoyment of such wages, lost interest on
15 such monies and expenses and attorney’s fees in seeking to compel Defendants to fully
16 perform their obligations under state law, all to their respective damage in amounts according
17 to proof at trial and within the jurisdictional limitations of this Court.

18 99. Plaintiffs seek to recover in a civil action all remedies including damages,
19 unpaid wages, penalties, attorney’s fees and costs, and injunctive relief to the fullest extent
20 permissible including those permitted pursuant to Labor Code sections 226(e), (h), and 226.3,
21 and Code of Civil Procedure section 1021.5.

22 100. Plaintiffs, on behalf of themselves and the members of the Wage Statement
23 Subclass, request relief as described below.

24 **SIXTH CAUSE OF ACTION**
25 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
26 **(Violation of Labor Code §§ 2800, and 2802)**

27 101. Plaintiffs re-allege and incorporate by this reference each and every allegation
28 set forth in all previous paragraphs of the Complaint.

102. Labor Code section 2800 provides, in pertinent part, “[a]n employer shall in

1 all cases indemnify his employee for losses caused by the employer's want of ordinary care."

2 103. Labor Code section 2802 provides, in pertinent part, "[a]n employer shall
3 indemnify his or her employee for all necessary expenditures or losses incurred by the
4 employee in direct consequence of the discharge of his or her duties..."

5 104. Further, Labor Code section 2802 additionally provides, in pertinent part,
6 "(c)...the term 'necessary expenditures or losses shall include all reasonable costs, including
7 but not limited to, attorney's fees incurred by the employee enforcing the rights granted by
8 this section."

9 105. California Labor Code section 2804 mandates that this statutory right cannot
10 be waived.

11 106. During the relevant time period, Defendants were required to indemnify and
12 reimburse Plaintiffs and members of the Plaintiff Class for all expenditures or losses caused
13 by the employer's want of ordinary care and/or incurred in direct consequent of the discharge
14 of their duties, but failed to indemnify and reimburse Plaintiffs and Class Members. For
15 example, Plaintiffs and members of the Plaintiffs Class were required to use their personal
16 cellphones and home internet for business-related purposes, including without limitation, to
17 coordinate with clients and other employees, in violation of Labor Codes sections 2800 and
18 2802.

19 107. As a direct and proximate result, Plaintiffs and members of the Plaintiff Class
20 have suffered, and continue to suffer, substantial losses, related to the use and enjoyment of
21 such monies to be reimbursed, lost interest on such monies, and expenses and attorney's fees
22 in seeking to compel Defendants to fully perform their obligations under California law, all
23 to their damage in amounts according to proof at the time of trial.

24 108. Accordingly, Plaintiffs and members of the Plaintiff Class are entitled to
25 recover, and hereby seek, an amount equal to incurred necessary expenditures, pre- and post-
26 judgment interest, applicable penalties, attorneys' fees and costs, and any further equitable
27 relief this Court may deem just and proper. See Cal. Lab. Code § 2802; see also, Cal. Civ.
28 Proc. Code § 1021.5.

1 109. Plaintiffs, on behalf of themselves and members of the Plaintiff Class, request
2 relief as described below.

3 **SEVENTH CAUSE OF ACTION**
4 **FAILURE TO TIMELY PAY WAGES DUE DURING EMPLOYMENT**
5 **(Violation of Cal. Labor Code §§ 204 and 210, and IWC Wage Order 4-2001)**

6 110. Plaintiffs re-allege and incorporate herein by this reference each and every
7 allegation set forth in all previous paragraphs of the Complaint.

8 111. Labor Code section 204 provides that all wages earned by an employee are due
9 and payable twice during each calendar month.

10 112. Defendants failed to timely pay Plaintiffs and Class Members all of their
11 earned wages as required by Labor Code section 204.

12 113. Plaintiffs and members of the Plaintiff Class have been deprived of their
13 rightfully earned wages as a direct and proximate result of Defendants' failure to pay said
14 compensation. Plaintiffs and members of the Plaintiff Class are entitled to recover such
15 amounts, plus interest thereon, attorney's fees and costs.

16 114. In addition, Plaintiffs and Class Members are entitled to penalties pursuant to
17 Labor Code section 210 as follows: (1) for Defendants' initial violation, \$100 for each failure
18 to pay each Class Member; and (2) for each of Defendants' subsequent violations, or any
19 willful or intentional violation, \$200 for each failure to pay each Class Member, plus 25
20 percent of the amount unlawfully held.

21 **EIGHTH CAUSE OF ACTION**
22 **FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF**
23 **EMPLOYMENT**
24 **(Violation of Labor Code §§ 201, 202 and 203, and IWC Wage Order 4-2001)**

25 115. Plaintiffs re-allege and incorporate by this reference each and every allegation
26 set forth in all previous paragraphs of the Complaint.

27 116. California Labor Code sections 201 and 202 provide that if an employer
28 discharges an employee, the wages earned and unpaid at the time of discharge are due and
payable immediately, and that if an employee voluntarily leaves his employment, his wages
shall become due and payable not later than seventy-two (72) hours thereafter, unless the

1 employee has given seventy-two (72) hours previous notice of his intention to quit, in which
2 case the employee is entitled to his wages at the time of quitting.

3 117. During the relevant time period, Defendants willfully failed to pay Plaintiffs
4 and Waiting Time Subclass Members all their earned wages upon termination including, but
5 not limited to, proper minimum wages and overtime and doubletime compensation, either at
6 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

7 118. Defendants' failure to pay Plaintiffs and Waiting Time Subclass Members all
8 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
9 Defendants' employ is in violation of Labor Code sections 201 and 202.

10 119. California Labor Code section 203 provides that if an employer willfully fails
11 to pay wages owed immediately upon discharge or resignation in accordance with Labor Code
12 sections 201 and 202, then the wages of the employee shall continue as a penalty from the due
13 date at the same rate until paid or until an action is commenced; but the wages shall not
14 continue for more than thirty (30) days.

15 120. Plaintiffs and Waiting Time Subclass Members are entitled to recover from
16 Defendants the statutory penalty which is defined as Plaintiffs' and Waiting Time Subclass
17 Members' regular daily wages for each day they were not paid, at their regular hourly rate of
18 pay, up to a thirty (30)-day maximum pursuant to Labor Code section 203.

19 **NINTH CAUSE OF ACTION**
20 **VIOLATION OF THE UNFAIR COMPETITION LAW**
21 **(Business and Professions Code §§ 17200, *et seq.*)**

22 121. Plaintiffs re-allege and incorporate herein by this reference each and every
23 allegation set forth in all previous paragraphs of the Complaint.

24 122. California Business and Professions Code sections 17200, *et seq.* prohibit acts
25 of unfair competition, which include any "unlawful, unfair or fraudulent business act or
26 practice . . ."

27 123. A violation of California Business and Professions Code sections 17200, *et*
28 *seq.* may be predicated on the violation of any state or federal law. In the instant case,
Defendants' policies and practices have violated state law causing Plaintiffs and Class

1 Members to suffer and continue to suffer injuries in fact. As alleged herein, Defendants
2 systematically engaged in unlawful conduct in violation of the California Labor Code and
3 IWC Wage Orders, such as failing to timely pay all earned wages, minimum wages, failing to
4 pay overtime wages, failing to authorize or permit paid rest breaks, failing to provide meal
5 periods, failing to furnish accurate itemized wage statements, failing to reimburse business
6 expenses, and failing to timely pay final wages due during and upon separation of
7 employment, all in order to decrease their costs of doing business and increase their profits.

8 124. This cause of action is brought under Business and Professions Code sections
9 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action
10 and pursuant to Business and Professions Code section 17208, Plaintiffs and all Class
11 Members seek restitution of wages owed and, where applicable, penalties under Labor Code
12 section 203, where such wages were due each of the Class Members during the Class Period,
13 commencing four (4) years prior to filing of this complaint, according to proof.

14 125. This cause of action is brought as a cumulative remedy as provided in Business
15 and Professions Code section 17205, and is intended as an alternative remedy for restitution
16 for Plaintiffs and each Class Member, for the time period, or any portion thereof, commencing
17 within four (4) years prior to the filing of this complaint, and as the primary remedy for
18 Plaintiffs and each member of the Plaintiff Class for the time period of the fourth year prior
19 to the filing of this complaint, as such one-year time period exceeds the statute of limitations
20 on statutory wage claims.

21 126. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs
22 and members of the Plaintiff Class wages and monies, thereby creating for Defendants an
23 artificially lower cost of doing business in order to undercut their competitors and establish
24 and/or gain a greater foothold in the marketplace.

25 127. At the time Plaintiffs and members of the Plaintiff Class were hired,
26 Defendants knowingly, intentionally, and wrongfully misrepresented to each of them their
27 conformance with the California Labor Code and IWC Wage Orders including proper
28 payments required by law.

1 128. At all relevant times herein, Defendants held themselves out to Plaintiffs and
2 members of the Plaintiff Class as being knowledgeable concerning the labor laws of
3 California.

4 129. At all times relevant herein, Plaintiffs and members of the Plaintiff Class relied
5 on and believed Defendants' representations concerning their conformance with California's
6 wage and hour laws all to their detriment.

7 130. As a result of Defendants' intentional, willful, purposeful, and wrongful
8 misrepresentation of their conformance with the California Labor Code and IWC Wage
9 Orders, Plaintiffs and members of the Plaintiff Class suffered a loss of wages and monies, all
10 in an amount to be shown according to proof at trial. By violating the foregoing statutes and
11 regulations as herein alleged, Defendants' acts constitute unfair and unlawful business
12 practices under California Business and Professions Code sections 17200, *et seq.*

13 131. Defendants' violations of the California Labor Code and IWC Wage Orders
14 and their scheme to lower their payroll costs as alleged herein constitute unlawful business
15 practices because they were done in a systematic manner over a period of time to the detriment
16 of the Plaintiffs and members of the Plaintiff Class.

17 132. As a result of the unfair business practices of Defendants, as alleged herein,
18 Plaintiffs and members of the Plaintiff Class are entitled to injunctive relief, disgorgement,
19 and restitution in an amount to be shown according to proof at trial.

20 133. Plaintiffs and members of the Plaintiff Class seek to enforce important rights
21 affecting the public interest within the meaning of California Code of Civil Procedure section
22 1021.5. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
23 unlawful, and harmful to members of the Plaintiff Class and to the general public. Based on
24 Defendants' conduct as alleged herein, Plaintiffs and members of the Plaintiff Class are
25 entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure section
26 1021.5.

27 ///

28 ///

NINTH CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO THE PAGA
(Labor Code §§ 2698, *et seq.*)

134. Plaintiffs re-allege and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of the Complaint.

135. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

136. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

137. Defendants’ conduct violates numerous Labor Code sections including, but not limited to, the following:

(a) Violation of Labor Code sections 201, 202, 203, 204, 510, 1194, 1197, and 1198 for failure to timely pay all earned wages (including minimum wages and overtime wages) owed to Plaintiffs and other aggrieved employees during employment and upon separation of employment as herein alleged;

(b) Violation of Labor Code sections 226.7 and 512 for failure to provide meal periods to Plaintiffs and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;

(c) Violation of Labor Code section 226.7 for failure to permit rest breaks to Plaintiffs and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

(d) Violation of Labor Code section 226 for failure to provide accurate

1 itemized wage statements to Plaintiffs and other aggrieved employees as herein alleged;

2 (e) Violation of Labor Code sections 1174 and 1174.5 for failure to
3 maintain accurate records; and

4 (f) Violation of Labor Code section 2802 for failure to reimburse all
5 reasonable and necessary business expenses;

6 138. Further, Labor Code section 558(a) provides in part: “any employer or other
7 person acting on behalf of an employer who violates, or causes to be violated, a section of this
8 chapter or any provisions regulating hours and days of work in any order of the IWC shall be
9 subject to a civil penalty as follows: (1) For any violation, fifty dollars (\$50) for each
10 underpaid employee for each pay period . . . (2) For each subsequent violation, one hundred
11 dollars (\$100) for each underpaid employee for each pay period for which the employee was
12 underpaid . . .” Plaintiffs seek only to recover the civil penalty provided for in Section 558(a)
13 for the violations alleged herein and **do not** seek to recover unpaid wages. Labor Code section
14 558(c) provides “the civil penalties provided for in this section are in addition to any other
15 civil or criminal penalty provided by law.”

16 139. As set forth above, Defendants have violated numerous provisions of the Labor
17 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly,
18 Plaintiffs seek the remedies set forth in Labor Code section 558 for themselves, the underpaid
19 employees, and the State of California.

20 140. Plaintiffs are “aggrieved employees” because they were employed by the
21 alleged violators and had one or more of the alleged violations committed against them, and
22 therefore are properly suited to represent the interests of all other aggrieved employees.

23 141. Plaintiffs have exhausted the procedural requirements under Labor Code
24 section 2699.3 as to Defendants and are therefore able to pursue a claim for penalties on behalf
25 of themselves and all other aggrieved employees under the PAGA.

26 142. The PAGA imposes a penalty of one hundred dollars (\$100.00) for each
27 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00)
28 for each aggrieved employee per pay period for each subsequent violation.

143. Labor Code section 226.3 provides for civil penalties for violations of Section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

144. Pursuant to Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

145. Plaintiffs, as representatives of the general public, seek to recover all Labor Code section 2699(f)(2) civil penalties for each Labor Code violation alleged herein, according to proof, as to those penalties otherwise only available in public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

146. For bringing this action, Plaintiffs are entitled to attorney's fees and costs incurred herein.

PRAAYER

Plaintiffs pray for judgment as follows:

1. That the Court determine this action may be maintained as a class action and Plaintiffs as Class Representative and Plaintiffs' counsel as Class Counsel;

2. For injunctive relief as provided by the Labor Code to the extent permitted by law including, but not limited to, pursuant to Section 226(h), and Business and Professions Code sections 17200, *et seq.*;

3. For restitution as provided by Business and Professions Code sections 17200, *et seq.*;

4. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code sections 17200, *et seq.*;

5. For an award of unpaid wages, including minimum and overtime wages, to the extent permissible by law to each affected person;

1 6. For an award of liquidated damages to the extent permissible by Labor Code
2 section 1194.2;

3 7. For an award of meal period premium wages equal to one hour of pay at the
4 employee's regular rate of pay for each workday that a meal period was not provided in
5 accordance with Labor Code sections 226.7 and 512, and Section 11 of the applicable IWC
6 Wage Order;

7 8. For an award of rest period premium wages equal to one hour of pay at the
8 employee's regular rate of pay for each workday that a rest period was not provided in
9 accordance with Labor Code section 226.7 and Section 12 of the applicable IWC Wage Order;

10 9. For reimbursement of unpaid business expenses, in accordance with Labor
11 Code section 2802;

12 10. For penalties to the extent permitted pursuant to the Labor Code and Orders of
13 the Industrial Welfare Commission including, but not limited to penalties under Labor Code
14 section 226(e);

15 11. For an award of waiting time penalties per former employee pursuant to Labor
16 Code section 203(a);

17 12. For an award of penalties incurred under Sections 210, 226.3, 226(e), and
18 1174.5 per underpaid employee pursuant to Labor Code sections 210, 226(e), 226.3, and
19 1174.5;

20 13. For an award of liquidated damages to the extent permissible by Labor Code
21 section 1194.2;

22 14. For penalties incurred under Labor Code section 1197.1 for each underpaid
23 employee per pay period for which the employee was underpaid;

24 15. For penalties under Labor Code section 558;

25 16. For civil penalties as described above pursuant to the PAGA, 75% of which
26 will be paid to the Labor Workforce Development Agency and 25% of which will be
27 distributed to the aggrieved employees;

28 17. For pre- and post-judgment interest to the extent permitted by law including,

1 but not limited to, Labor Code sections 218.6 and 1194;

2 18. Determine the appropriate remedy to compensate Plaintiffs, Plaintiff Class,
3 and Subclass Members, as required to promote fairness and justice, including but not limited
4 to establishing procedures for compensation, and fluid recovery if appropriate.

5 Dated: October 26, 2020

LEBE LAW, APLC

6
7 By: 
Jonathan M. Lebe

8 Attorney for Plaintiffs Beniyam Kebede, Alain
9 Tsai, and Monica I. Pazmino, individually and
on behalf of all others similarly situated

10 Dated: October 26, 2020

COHELAN KHOURY & SINGER

11
12 By: 
13 Michael D. Singer
Jeff Geraci

14 Attorney for Plaintiffs Beniyam Kebede, Alain
15 Tsai, and Monica I. Pazmino, individually and
on behalf of all others similarly situated

16 **DEMAND FOR JURY TRIAL**

17 Plaintiffs demand a trial by jury on all claims so triable.

18 Dated: October 26, 2020

Lebe Law, APLC

19
20 By: 
Jonathan M. Lebe

21 Attorney for Plaintiffs Beniyam Kebede, Alain
22 Tsai, and Monica I. Pazmino, individually and
on behalf of all others similarly situated

23 Dated: October 26, 2020

COHELAN KHOURY & SINGER

24
25 By: 
26 Michael D. Singer
Jeff Geraci

27 Attorney for Plaintiffs Beniyam Kebede, Alain
28 Tsai, and Monica I. Pazmino, individually and
on behalf of all others similarly situated

EXHIBIT 1



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August 18, 2020

Notice Via Online Submission and Fee Via Certified Mail

Department of Industrial Relations, Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
<https://dir.tfaforms.net/128>

Re: Amended Notice by Beniyam Kebede, Monica Pazmino, & Alain Tsai, on behalf of themselves and all similarly-situated aggrieved California employees of Wrike, Inc., as individuals and as proposed Representatives of the State of California

Dear PAGA Administrator:

Pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code sections 2698, et seq. ("PAGA"), Beniyam Kebede, Monica Pazmino, & Alain Tsai ("Claimants") intends to bring a civil action against their former employer, Wrike, Inc. ("Defendant" or "Wrike"), individually and on behalf of all other similarly-aggrieved employees. This letter serves as Claimants' written notice pursuant to Labor Code section 2699.3(a)(1)(A) providing the Labor and Workforce Development Agency (hereafter "LWDA") the opportunity to investigate the alleged claims contained herein.

If the LWDA does not intend to investigate the alleged violations, Claimants intend to prosecute a case for PAGA penalties on behalf of themselves and all other aggrieved employees of the Defendant, and shall seek civil penalties under the PAGA on behalf of themselves and all other aggrieved employees in the State of California. A copy of this notice is being sent to Defendant by certified mail at the address below.

FACTUAL STATEMENT

Wrike is based out of San Jose, California and provides software management tools to businesses. The Claimants worked for Wrike as Strategic Account Managers, Account Managers, or other similar sales-positions. During their employment, Claimants and certain categories of salespeople were classified as "exempt" employees and were compensated on a salary plus commissions basis, while other salespeople were paid on

an hourly plus commission basis. Claimants and other aggrieved employees regularly worked more than eight (8) hours in a workday and/or forty (40) hours in a workweek. Certain commissioned inside sales employees may be exempt from overtime pay in California if the employee earns more than one-and-a-half times the minimum wage each workweek, and more than half of the employee's compensation represents commission earnings. (See *Peabody v. Time Warner Cable, Inc.*, (2014) 59 Cal.4th 662.) However, Claimants and other aggrieved employees did not earn more than half of their compensation in commission earnings. As such, they do not meet the requirements to be classified as exempt under the commissioned salesperson/inside salesperson exemption and should have been classified as "non-exempt" employees, afforded the protections of the California Labor Code and applicable IWC Wage Order. Similarly, aggrieved employees who were paid on an hourly basis were discouraged from recording all time they actually worked, and these employees were not paid all overtime wages earned at the correct regular rate based on their commissions earned.

As a result of these practices and others as further described below, Defendant failed to pay Claimants and other aggrieved employees' wages for all hours worked, including overtime premium wages, failed to provide legally compliant meal and rest periods, failed to provide accurate itemized wage statements, failed to reimburse all necessarily incurred business expenses, and failed to pay all wages due and owed during and upon separation of employment. Defendant also failed to promptly pay all wages owed to Claimants and other aggrieved employees, and instead, required them to sign a payment acknowledgment form, before they could receive their final wages. Further, Defendant regularly failed to pay all commissions earned by Claimant and other aggrieved employees. The failure of Defendant to pay employees overtime premium wages for all hours worked in excess of 8 hours per day and/or 40 hours per week, its failure to provide meal and rest periods, failure to reimburse for business expenses, failure to provide accurate itemized wage statements, and failure to promptly pay all wages at the time of termination or separation, establishes the right to recover civil penalties as set forth in the Labor Code. California Labor Code sections 201-203, 204, 206, 206.5 218.5, 223, 226, 226.3, 226.7, 256, 510, 558, 558.1, 1174.5, 1182.12, 1194, 1194.2, 1194.5, 1198, 2802, and 2699. The applicable provisions of the Labor Code and Industrial Welfare Commission (IWC) Wage Order are described below.

FAILURE TO PAY OVERTIME WAGES

(Labor Code §§ 226.2, 510, 1194, and 1198, and the "Hours and Days of Work" Sections of the Applicable IWC Wage Order.)

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code section 1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 1198 states: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Pursuant to the "Hours & Days of Work" Section of the applicable IWC Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Despite the fact that Claimants and other aggrieved employees regularly worked overtime hours, they were not paid overtime premium wages because Defendant misclassified them as exempt from California's overtime requirements as detailed above. While, aggrieved employees who were paid on an hourly plus commissions basis by Defendant were discouraged from recording all hours worked, and were not paid all overtime wages earned at the correct regular rate based on their commissions earned. Claimants intend to pursue remedies pursuant to the PAGA for the alleged violation on behalf of himself and all other aggrieved employees in the state of California.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.2, 510, 1194, 1195.5, and 1198, and the "Hours and Days of Work" Section of the Applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes" Labor Code section 226.7(a) states that "no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

The "Rest Period" Section of applicable IWC Wage Order states, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period 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." If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation of each workday that the rest period is not provided.

During Claimants' employment, Defendant failed to provide Claimants and other aggrieved employees with off-duty meal periods and duty-free rest periods as required by

Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. Furthermore, Defendant failed to pay one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Labor Code section 226.7(c) states: "[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided."

Claimants intend to pursue remedies pursuant to the PAGA for the alleged violations on behalf of themselves and all other aggrieved employees in the state of California.

FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS

(Labor Code § 226 and the "Records" Section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer . . .; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

"An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of costs and reasonable attorney's fees."

Due to Defendant's failure to pay all wages, the itemized wage statements provided by Defendant to Claimants and other aggrieved employees were inaccurate. Furthermore, as an independent violation, Defendant failed to identify the accurate total hours worked on each wage statement as it routinely identified employees as having worked "86.67" total hours during each pay period rather than the actual total hours worked. Consequently, Defendant is liable to Claimants and other aggrieved employees. Claimants intend to pursue remedies pursuant to the PAGA for the alleged violation on behalf of themselves and all other aggrieved employees in the state of California.

**FAILURE TO TIMELY PAY WAGES DURING
AND UPON TERMINATION OF EMPLOYMENT**

(Labor Code §§ 201, 202, 203, 204, 206, 206.5, 256, 1198, and 2699, and the "Minimum Wages" Section of the Applicable Wage Order)

Labor Code section 204(a) states, in pertinent part, "All wages ... earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the Employer as the regular paydays." The "Minimum Wages" Section of the applicable Wage Order further states "every Employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period."

Labor Code section 201 states: "If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code section 203(a) states, in relevant part: "If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents herself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment."

Labor Code section 206(a) states, in relevant part: "In case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to as to any balance claimed."

Labor Code section 206.5 states, in relevant part: "An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made."

Labor Code section 256 states: "The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203."

As detailed above, Defendant failed to timely pay Claimants and similarly-aggrieved employees all wages due and owing during and upon termination of employment. Additionally, Defendant required Claimants and other aggrieved employees to sign a payment acknowledgment form upon separation or termination of

employment, in violation of Sections 206 and 206.5 of the Labor Code. As a result, Defendant willfully failed to pay all wages when required by Sections 201 and 202 of the Labor Code. Therefore, Defendant owes penalties to all affected employees, including Claimants. Claimants intend to pursue remedies pursuant to the PAGA for the alleged violations on behalf of themselves and all other aggrieved employees in the state of California.

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

California Labor Code section 2802(a) states: "An Employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

Labor Code section 2802(b) states: "All awards made by a Court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss." The exact amount of interest is in an amount to be proven at time of trial.

Furthermore, Labor Code section 2802(c) states: "For the purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee in enforcing the rights granted by this section."

Defendant failed to fulfill these obligations when they failed to reimburse Claimants and other aggrieved employees for all costs and expenses they incurred while working for Defendant, including but not limited to, cell phone and home-internet costs incurred in the discharge of their duties for Defendant.

Claimants will pursue all remedies, including recovery of wages, interest, attorneys' fees and costs, penalties and those provided by the PAGA, to the extent allowed by law on behalf of themselves and other similarly-aggrieved employees.

CIVIL PENALTIES FOR VIOLATION OF LABOR CODE AND IWC WAGE ORDERS

(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any Employer or other person acting on behalf of an Employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: "Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation."

As set forth above, Defendant was the employer, or other person acting on behalf the employer, and violated, or caused to be violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 203, 206, 206.5 226, 226.7, 1197, 1197.1, 1194, 1194.5, 510, 512, and 1198 and caused the employees to be underpaid wages as set forth by the Labor Code and by the IWC Wage Order. As a result, Defendant is liable for civil penalties under Labor Code sections 558, and 558.1.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every Employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. Employers violated this requirement by their failure to accurately record employee hours worked and/or paid. Labor Code section 1174.5 imposes a civil penalty of \$500 for an Employer's failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimants and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

Claimants will pursue all remedies on behalf of themselves and other current and former aggrieved employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, 2699, et seq., and 2802)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, et seq. give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, et seq., aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, Defendant is liable for these items in addition to the unpaid wages. Claimants have already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of Defendant's unlawful actions.

CONCLUSION

Claimants request the LWDA initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Claimants will pursue claims for statutory penalties and will seek all remedies available for violations of the Labor Code and the applicable Industrial Welfare Commission Wage Order, including all available penalties set forth in Labor Code section 2699(f).

Sincerely,



Jonathan M. Lebe, Esq.
Attorney for Beniyam Kebede, Monica Pazmino, & Alain Tsai,
Individually and on behalf of Aggrieved Employees

Copied by Certified Mail:

Wrike, Inc.
70 N. 2nd Street,
San Jose, CA 95113

Incorp Services, Inc.
5716 Corsa Ave, Suite 110,
Westlake Village, CA 91362-7354

1 **PROOF OF SERVICE**

2 *Kebede, Tsai, and Pazmino v. Wrike, Inc.*

3 Santa Clara Superior Court Case No. 20CV366599

4 I, Amber Worden, declare as follows:

5 I am employed in the County of San Diego, State of California. I am over the age of 18 and not a
6 party to this action. My business address is 605 "C" Street, Suite 200, San Diego, California 92101.

7 On October 26, 2020, I instituted service of the forgoing document(s) described as:

8 **THIRD AMENDED COMPLAINT**

9 on the following parties:

10 **Counsel for Defendant**

11 Ryan H. Crosner, Esq.
12 Kevin Ha, Esq.
13 OGLETREE, DEAKINS, NASH, SMOAK &
14 STEWART, P.C.
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Jonathan M. Lebe, Esq.
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15 I then caused service of each document in the manner described below:

16 **[XX] BY ELECTRONIC SERVICE – GREENFILING:** by submitting an electronic version of the
17 documents through the user interface at www.greenfiling.com

18 **[XX] STATE:** I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed October 26, 2020 at San Diego, California.

21
22 
23 Amber Worden