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individually and as a proxy for the State of California

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

ALFREDO CRESCI, an individual, and
as a proxy for the State of California,

Plaintiff,

vs.

COX ENTERPRISES, INC., a foreign
corporation; COX AUTOMOTIVE
CORPORATE SERVICES, LLC, a
foreign limited liability company; and
DOES 1 through 5, inclusive,

Defendants.

Case No.: 2:20-cv-06832-VAP-SK
Judge: Hon. Virginia A. Phillips
Courtroom: 8A

**SECOND AMENDED COMPLAINT
FOR:**

- 1. Cal. Lab. Code § 510 Failure to Pay Overtime Wages**
- 2. 29 U.S.C. § 201 Failure to Pay Overtime Wages**
- 3. Cal. Lab. Code § 203 Waiting Time Penalties**
- 4. Cal. Lab. Code § 2802 Failure to Reimburse and Indemnify for Expenditures**
- 5. Cal. Lab. Code § 2698 Private Attorneys General Act**

Complaint filed: June 18, 2020
Trial Date: None Set

DEMAND FOR JURY TRIAL

1 Plaintiff, ALFREDO CRESCI, alleges as follows:

2 **JURISDICTION AND VENUE**

3 1. Plaintiff filed his initial Complaint in the Superior Court of the State of
4 California. Concurrent with filing the Complaint in state court, Plaintiff timely filed a
5 demand for jury trial included in the Complaint.

6 2. On July 29, 2020, Defendant COX AUTOMOTIVE CORPORATE
7 SERVICES, LLC (“COX”) served an Answer, as a responsive pleading, to Plaintiff’s
8 Complaint.

9 3. This Court has subject matter jurisdiction and venue is proper in this Court.

10 **PARTIES**

11 4. Plaintiff is an individual who resides in the State of California.

12 5. Defendant COX is a limited liability company that conducted, and is
13 conducting, business in the State of California without a registration filed with the
14 California Secretary of State.

15 6. Plaintiff is ignorant of the true names and capacities of the defendants sued
16 herein as DOES 1-5, inclusive, and therefore sues these defendants by such fictitious
17 names and capacities. Plaintiff will seek leave to amend this Complaint to allege their
18 true names and capacities when ascertained. Plaintiff is informed and believes and on that
19 basis alleges that each fictitiously named defendants are responsible in some manner for
20 the occurrences herein alleged, and that Plaintiff’s injuries were proximately caused by
21 the conduct of such defendants.

22 7. Defendant and DOES 1-5 are alleged to be co-conspirators with each other,
23 in that each agreed to participate, and participated in, the furtherance of the objective of
24 civil wrongs as alleged in this Complaint.

25 8. Plaintiff is informed and believes and thereupon alleges that at all times
26 material herein, each defendant was completely dominated and controlled by its, his or
27 her co-defendants, each was the agent, representative, and alter ego of the others, and all
28 aided and abetted the wrongful acts of the others.

9. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the corporate defendants, and each of them, had the right to control, and controlled, Plaintiff's wages, hours and working conditions, and has the right to control the manner in which Plaintiff performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all relevant times alleged herein.

10. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the defendants were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

GENERAL ALLEGATIONS

11. Defendant employed Plaintiff to work in California from his home as an account manager from on or about February 7, 2018, to on or about January 14, 2020.

12. During Plaintiff's employment, Plaintiff worked over eight (8) hours per day and over forty (40) hours a week.

13. Defendant never paid Plaintiff overtime wages at one and one-half his regular rate of pay for hours worked over eight (8) per day and over forty (40) a week.

14. During Plaintiff's employment, Defendant required or directed that Plaintiff use his personal cell phone and use internet data for work related purposes to discharge his duties. Defendant failed to reimburse Plaintiff for cell phone or internet use.

15. From April 1, 2019, to present, other account managers working in California for Defendant also worked over eight (8) hours per day and over forty (40) hours or more hours a week.

16. From April 1, 2019, to present, Defendant never paid the other account managers overtime wages at one and one-half their regular rate of pay for hours worked over eight (8) per day and over forty (40) a week.

17. From April 1, 2019, to present, Defendant required or directed that other account managers working in California for Defendant to use their personal cell phone for work related purposes to discharge their duties.

18. From April 1, 2019, to present, Defendant did not reimburse the other account managers for cell phone use.

FIRST CLAIM

CAL. LAB. CODE § 510 FAILURE TO PAY OVERTIME WAGES (AGAINST COX AND DOES 1-5)

19. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

20. Any employee receiving less than the California legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including interest and reasonable attorney's fees. Cal. Lab. Code § 1194(a).

21. "Any work in excess of eight 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." Cal. Lab. Code § 510(a). California Labor Code section 1198 provides that the maximum hours of work fixed by the commission shall be the maximum hours of work for employees. California Labor Code section 1173 defines commission as Industrial Welfare Commission ("IWC"). Further, 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." Cal. Lab. Code § 1198. Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, and Section 4 of IWC Order No. 17-2001, provide that "employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1 1/2) times such employee's regular rate of pay for all hours worked

1 over 40 hours in the workweek.” Section 7(A) requires every employer to keep accurate
2 time records showing when the employee begins and ends each work period and the total
3 hours worked in the payroll period.

4 22. During Plaintiff’s employment, he worked more than eight hours per
5 workday and more than 40 hours per workweek and was not compensated for those
6 overtime hours worked more than eight per day and 40 per week. As such, Defendant
7 violated California Labor Code sections 510 and 1198 because it violated the above-
8 referenced as Industrial Welfare Commission Orders, as applicable.

9 23. If the defendant does not keep accurate records of the hours worked by the
10 plaintiff, then the plaintiff may prove the number of overtime hours worked by making a
11 reasonable estimate of those hours.

12 24. As a direct and proximate result of the violations of law by Defendant,
13 Plaintiff has worked a substantial number of hours without receiving overtime
14 compensation, at the applicable rate, from Defendant, in accordance with California law.

15 25. Plaintiff has been damaged in an amount equal to the compensation to which
16 he was entitled but was unlawfully deprived by Defendant, subject to proof at trial.

17 26. Pursuant to California Labor Code section 1194(a) Plaintiff is entitled to
18 interest at the legal rate on the overtime wages owed to Plaintiff by Defendant.

19 27. Pursuant to California Labor Code section 1194(a), Plaintiff is entitled to an
20 award of attorneys’ fees, and costs.

21 **SECOND CLAIM**

22 **29 U.S.C. § 201 FAILURE TO PAY OVERTIME WAGES** 23 **(AGAINST COX AND DOES 1-5)**

24 28. Plaintiff incorporates each allegation set forth in all of the preceding
25 paragraphs as though set forth herein in full again.

26 29. With limited exceptions that do not apply here, no employer shall employ
27 any of its employees who in any workweek for a workweek longer than forty hours
28 unless such employee receives compensation for his employment in excess of the hours

1 above specified at a rate not less than one and one-half times the regular rate at which he
2 is employed. 29 U.S.C. § 207(a).

3 30. “Any employer who violates the provisions of [29 U.S.C. § 207] shall be
4 liable to the employee or employees affected in the amount of their unpaid
5 minimum wages, or their unpaid overtime compensation, as the case may be, and in an
6 additional equal amount as liquidated damages.” 29 U.S. Code § 216(b). Thus, Plaintiff
7 is also entitled to liquidated damages in amount equal to unpaid overtime wages.

8 **THIRD CLAIM**

9 **CAL. LABOR CODE § 203 WAITING TIME PENALTIES**

10 **(AGAINST COX AND DOES 1-5)**

11 31. Plaintiff incorporates each allegation set forth in all of the preceding
12 paragraphs as though set forth herein in full again.

13 32. “If an employer willfully fails to pay, without abatement or reduction, in
14 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an
15 employee who is discharged or who quits, the wages of the employee shall continue as a
16 penalty from the due date thereof at the same rate until paid or until an action therefor is
17 commenced.” Cal. Lab. Code § 203(a).

18 33. Defendant failed to timely pay Plaintiff his overtime wages within 72 hours
19 of his last date of work, in violation of California Labor Code § 202, and failed to pay his
20 the additional continuing wages as a penalty from the original due date, in violation of
21 California Labor Code § 203.

22 34. Plaintiff has been harmed by Defendant’s conduct and is entitled to a
23 statutory waiting time penalty, in an amount according to proof at trial, interest thereon,
24 and an award of attorneys’ fees, and costs.

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FOURTH CLAIM

CAL. LAB. CODE § 2802 FAILURE TO REIMBURSE

AND INDEMNIFY FOR EXPENDITURES

(AGAINST COX AND DOES 1-5)

35. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

36. California Labor Code § 2802(a) provides that “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”

37. California Labor Code “Section 2802 is designed to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

38. Defendant violated California Labor Code section 2802 by passing on its operating expenses to Plaintiff, in violation of Labor Code § 2802(a).

39. Defendant required or directed that Plaintiff use his personal cell phone and use internet data for work related purposes to discharge his duties.

40. Defendant failed to reimburse and indemnify Plaintiff for cell phone or internet use.

41. Plaintiff has been damaged in an amount according to proof at trial, by Defendant’s failure to reimburse and indemnify.

42. Pursuant to California Labor Code § 2802, and other applicable statutes, Plaintiff is entitled to reimbursement of expenditures, in an amount according to proof at trial, interest thereon, and an award of attorneys’ fees, and costs.

FIFTH CLAIM

CAL. LAB. CODE § 2698 PRIVATE ATTORNEYS GENERAL ACT

(AGAINST COX AND DOES 1-5)

43. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

44. Pursuant to the California Labor Code Private Attorneys General Act (“PAGA”), “Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code § 2699(a). “For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions.” Cal. Lab. Code § 2699(f).

45. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”).

46. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Cal. Lab. Code § 22. Under PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Cal. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

Cal. Lab. Code § 2699(f)(2) Penalties: §§ 2802, 510, 204, 1198, 226(a), 1174
§ 2802

47. “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.” Cal. Lab. Code § 2802(a). In *Cochran v. Schwan’s*, the court held:

1 If an employee is required to make work-related calls on a personal
 2 cell phone, then he or she is incurring an expense for purposes of
 3 section 2802. It does not matter whether the phone bill is paid for by
 4 a third person, or at all. In other words, it is no concern to the
 5 employer that the employee may pass on the expense to a family
 6 member or friend, or to a carrier that has to then write off a loss. It
 7 is irrelevant whether the employee changed plans to accommodate
 8 work-related cell phone usage. Also, the details of the employee's
 9 cell phone plan do not factor into the liability analysis. Not only
 does our interpretation prevent employers from passing on operating
 expenses, it also prevents them from digging into the private lives of
 their employees to unearth how they handle their finances vis-à-vis
 family, friends and creditors. To show liability under section 2802,
 an employee need only show that he or she was required to use a
 personal cell phone to make work-related calls, and he or she was
 not reimbursed.

10 *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144–45 (2014), review
 11 denied (Nov. 25, 2014).

12 48. Here, like in *Cochran*, if an employee is required to do work-related
 13 activities on a personal cell phone, then he is incurring an expense for purposes of section
 14 2802. Here, as in *Cochran*, to show liability under section 2802, an employee need only
 15 show that she was required or directed to use a personal cell phone to do work-related
 16 activities and was not reimbursed.

17 49. Plaintiff and aggrieved employees were required or directed to use personal
 18 cell phones to do work-related activities and were not reimbursed for any portion of their
 19 cell phone expenses, in violation of California Labor Code § 2802(a).

20 50. “Any employer or other person acting on behalf of an employer, who
 21 violates, or causes to be violated, any provision regulating minimum wages or hours and
 22 days of work in any order of the Industrial Welfare Commission, or violates, or causes to
 23 be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
 24 employer for such violation.” Cal. Lab. Code § 558.1(a). It is currently unknown who
 25 caused Defendant to violate California Labor Code § 2802.

26 51. California Labor Code § 2802 does not have a civil penalty specifically
 27 provided. Thus, Labor Code § 2699(f) is applicable to impose civil penalties of one
 28 hundred dollars (\$100) for each aggrieved employee per pay period for the initial

1 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
2 each subsequent violation.

3 **§ 510**

4 52. California Labor Code § 510(a) provides that “Any work in excess of eight
5 hours in one workday and any work in excess of 40 hours in any one workweek and the
6 first eight hours worked on the seventh day of work in any one workweek shall be
7 compensated at the rate of no less than one and one-half times the regular rate of pay for
8 an employee.”

9 53. As set forth above, Plaintiff, and co-workers, worked over eight (8) hours
10 per day and over forty (40) hours per week, without being paid overtime wages in
11 violation of Labor Code § 510(a). Labor Code § 510 does not provide for its own self-
12 contained civil penalty within the statute. Thus, Labor Code § 2699(f)(2) applies to
13 provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial
14 violation and \$200 for each aggrieved employee per pay period for each subsequent
15 violation.

16 54. “Any employer or other person acting on behalf of an employer, who
17 violates, or causes to be violated, any provision regulating minimum wages or hours and
18 days of work in any order of the [IWC], or violates, or causes to be violated, Sections
19 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such
20 violation.” Cal. Lab. Code § 558.1(a). It is currently unknown who caused Defendant to
21 violate California Labor Code § 510.

22 **§ 204**

23 55. California Labor Code § 204(b)(1) provides that “all wages earned for labor
24 in excess of the normal work period shall be paid no later than the payday for the next
25 regular payroll period.”

26 56. As set forth above, Plaintiff, and the other co-workers, worked over eight (8)
27 hours per day and over forty (40) hours per week, without being paid overtime wages.
28 Defendant violated California Labor Code § 204(b)(1) by failing to pay Plaintiff and his

1 co-workers for all the overtime wages that they earned which were in excess of the
2 normal work period, by the next payday which followed the overtime work. California
3 Labor Code § 204 does not provide for its own self-contained civil penalty within the
4 statute. Thus, Labor Code § 2699(f)(2) applies to provide a civil penalty of \$100 for each
5 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved
6 employee per pay period for each subsequent violation.

7 § 1198

8 57. California Labor Code § 1198 provides that the maximum hours of work and
9 the standard conditions of labor fixed by the IWC shall be the maximum hours of work and
10 the standard conditions of labor for employees. Further, the “employment of any employee
11 for longer hours than those fixed by the order or under conditions of labor prohibited by
12 the order is unlawful.” Cal. Lab. Code § 1198.

13 58. Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001,
14 6-2001, 7-2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, and
15 Section 4 of IWC Order No. 17-2001, provide that “employees shall not be employed more
16 than eight (8) hours in any workday or more than 40 in a workweek unless the employee
17 receives one and one half (1 1/2) times such employee’s regular rate of pay for all hours
18 worked over 40 hours in the workweek.”

19 59. As set forth above, Plaintiff, and the other co-workers, worked over eight (8)
20 hours per day and over forty (40) hours per week, without being paid overtime wages in
21 violation of IWC Wage Orders. As such, Defendant violated California Labor Code
22 section 1198 by violating relevant Wage Orders of the IWC.

23 60. California Labor Code § 1198 does not provide for its own self-contained
24 civil penalty within the statute. Thus, Labor Code § 2699(f)(2) applies to provide a civil
25 penalty of \$100 for each aggrieved employee per pay period for the initial violation and
26 \$200 for each aggrieved employee per pay period for each subsequent violation.

27 61. “Any employer or other person acting on behalf of an employer, who
28 violates, or causes to be violated, any provision regulating minimum wages or hours and

1 days of work in any order of the [IWC], or violates, or causes to be violated, Sections
 2 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such
 3 violation.” Cal. Lab. Code § 558.1(a). It is currently unknown who caused Defendant to
 4 violate wage orders.

5 62. Other aggrieved employees are any current or former California employees
 6 who worked more than eight hours per day or forty hours per week without being paid all
 7 overtime compensation.

8 **§ 226(a)**

9 63. “An employer, semimonthly or at the time of each payment of wages, shall
 10 furnish to his or her employee, either as a detachable part of the check, draft, or voucher
 11 paying the employee’s wages, or separately if wages are paid by personal check or cash,
 12 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
 13 worked by the employee, except as provided in subdivision (j), (3) the number of piece-
 14 rate units earned and any applicable piece rate if the employee is paid on a piece-rate
 15 basis, (4) all deductions, provided that all deductions made on written orders of the
 16 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
 17 inclusive dates of the period for which the employee is paid, (7) the name of the
 18 employee and only the last four digits of his or her social security number or an employee
 19 identification number other than a social security number, (8) the name and address of the
 20 legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during the
 21 pay period and the corresponding number of hours worked at each hourly rate by the
 22 employee.” Cal. Lab. Code § 226(a).

23 64. Defendant failed to provide Plaintiff and the other co-workers with *accurate*
 24 itemized wage statements showing (a) total hours worked and (b) all applicable hourly
 25 rates in effect during the pay period and the corresponding number of hours worked at
 26 each hourly rate. Defendant also failed to keep itemized wage statement records of the
 27 foregoing.

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65. California Labor Code § 226 does not provide for its own self-contained “civil” penalty within the statute. Thus, Labor Code § 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

66. “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 IWC, 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.” Cal. Lab. Code § 558.1(a). It is currently unknown who caused Defendant to violate California Labor Code § 226.

§ 1174(d)

67. California Labor Code section 1174(d) provides that every person employing labor in this state shall keep payroll records showing the hours worked daily by and the wages paid to employees employed for not less than three years. “Person” means any person, association, organization, partnership, business trust, limited liability company, or corporation. Cal. Lab. Code § 18.

68. Defendant failed to maintain records showing the actual and accurate hours worked by Plaintiff and the other co-workers, in violation of California Labor Code section 1174. Labor Code section 1174 does not provide for its own self-contained civil penalty within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

Cal. Lab. Code § 2699(a) Penalties: §§ 558, 210, 226.3, 1174.5

§ 558

69. Pursuant to California Labor Code § 558(a) any employer or other person acting on behalf of an employer who violates, or causes to be violated, [California Labor Code section 510] or any provision regulating hours and days of work in any order of the IWC shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.

70. As set forth above, Defendant violated California Labor Code §§ 510 and 1198, and violated the above-referenced as IWC wage orders as applicable. As such, Defendant is subject to civil penalties for the initial violation and subsequent violations. Those subject to Labor Code § 558 penalties include any “person acting on behalf of” Defendant who caused Defendant to violate the California Labor Code. *Reynolds v. Bement*, 36 Cal. 4th 1075, 1094 (2005); *Atempa v. Pedrazzani*, 27 Cal. App. 5th 809 (2018).

§ 210

71. Pursuant to California Labor Code § 210(a), in addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in California Labor Code section 204 shall be subject to a civil penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

72. As set forth above, California Defendant violated Labor Code § 204. As such, Defendant is subject to civil penalties “plus 25 percent of the amount unlawfully withheld,” as civil penalties pursuant to California Labor Code section 210(a).

§ 226.3

73. “Any employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of

1 Section 226.” Cal. Lab. Code § 226.3. This section “sets out a civil penalty for *all*
 2 violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App.
 3 5th 667, 675 (2018). Because Defendant violated California Labor Code section 226(a),
 4 Defendant is subject to civil penalties under section 226.3 applicable to Plaintiff and
 5 other current and former aggrieved employees.

6 § 1174.5

7 74. Pursuant to California Labor Code Section 1174.5, any person employing
 8 labor who willfully fails to maintain accurate and complete records required by
 9 subdivision (d) of Section 1174 shall be subject to a civil penalty of five hundred dollars
 10 (\$500). As discussed above, Defendant violated California Labor Code Section 1174(d).
 11 Defendant willfully failed to maintain records showing the accurate hours worked daily
 12 by Plaintiff and other coworkers. Thus, Defendant is subject to civil penalties.

13 *First PAGA Notice Exhaustion of Administrative Remedies*

14 75. On April 1, 2020, Plaintiff provided notice (“First PAGA Notice”), attached
 15 hereto as **Exhibit 1**, to the California Labor and Workforce Development Agency
 16 (“LWDA”).

17 76. Pursuant to California Labor Code § 2699.3, the First PAGA Notice detailed
 18 the specific provisions of the foregoing California Labor Code sections that have been
 19 violated, including the facts and theories to support the violations. The LWDA file
 20 number is LWDA-CM-782952-20. Plaintiff submitted a fee waiver to the LWDA.

21 77. The First PAGA Notice was sent by certified mail on or about April 1, 2020,
 22 to COX. The postal service delivered the certified mail to COX on April 6, 2020.

23 78. The LWDA has not, within 65 days of Plaintiff’s First PAGA Notice of
 24 violations of the Labor Code, sent Plaintiff notice that it intends to investigate the
 25 violations. Thus, Plaintiff has exhausted Plaintiff’s administrative remedies, pursuant to
 26 California Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil
 27 penalties pursuant to Labor Code section 2699. Plaintiff seeks civil penalties for the
 28 violations from the date of April 1, 2019, and ongoing.

Supplemental PAGA Violations and Notice

79. During Plaintiff's employment, Defendant required or directed that he use internet service to do his work, as an employee working remotely.

80. Defendant failed to reimburse Plaintiff for any portion of his internet usage expenses.

81. During Plaintiff's employment, and continuing to present, Defendant required or directed that other California employees, not just account managers, working remotely to use internet to do their work.

82. Defendant failed to reimburse those other employees, not just account managers, for any portion of their internet usage expenses.

83. By not reimbursing Plaintiff and other California employees for internet expenses, Defendant violated California Labor Code section 2802(a).

84. On August 4, 2020, Plaintiff submitted a supplemental notice ("Supplemental PAGA Notice"), attached hereto as **Exhibit 2**, to the LWDA pursuant to California Labor Code § 2699.3, detailing additional facts and theories to support the violations of California Labor Code § 2802.

85. The Supplemental PAGA Notice was sent to Defendant COX by certified mail on or about August 4, 2020, (7019 0140 0000 7526 8699) and to defense counsel on or about August 4, 2020 by first class mail.

86. The LWDA has not, within 65 days of Plaintiff's PAGA Supplemental Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the additional violations. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to California Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil penalties pursuant to California Labor Code section 2699.

87. Plaintiff seeks civil penalties for the California Labor Code section 2802 violations regarding internet usage and reimbursement, from the date of August 4, 2019, and ongoing.

PRAYER

WHEREFORE, Plaintiff prays:

1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
2. For compensatory damages, in an amount according to proof at trial.
3. For statutory penalties pursuant to the California Labor Code.
4. For liquidated damages pursuant to 29 U.S.C. section 201 *et seq.*
5. For reimbursement and indemnification for all work-related expenditures, in an amount according to proof at the time of trial.
6. For reasonable attorneys' fees pursuant to the California Labor Code and 29 U.S.C. section 201 *et seq.*
7. For costs of suit including expert witness fees.
8. For prejudgment interest.
9. For such other and further relief as the Court may deem proper.

Dated: October 16, 2020

GUTIERREZ DERHAM LAW FIRM LLP

By: /s/ Matthew Gutierrez
Matthew Gutierrez
Attorneys for Plaintiff, ALFREDO
CRESCI, individually and as a proxy for
the State of California

DEMAND FOR JURY TRIAL

Plaintiff ALFREDO CRESCI hereby demands a trial by jury.

Dated: October 16, 2020

GUTIERREZ DERHAM LAW FIRM LLP

By: /s/ Matthew Gutierrez
Matthew Gutierrez
Attorneys for Plaintiff, ALFREDO
CRESCI, individually and as a proxy for
the State of California