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and other similarly-situated and aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ATTILA MOLNAR, on behalf of himself
and other similarly-situated and aggrieved
employees,

Plaintiff,

vs.

ABA PROTECTION, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. 20STCV22777

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

1. FAILURE TO PAY MINIMUM AND
REGULAR WAGES
2. FAILURE TO PAY OVERTIME
WAGES
3. FAILURE TO PROVIDE MEAL
PERIODS OR PAY IN LIEU THEREOF
4. FAILURE TO PROVIDE REST
PERIODS OR PAY IN LIEU THEREOF
5. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS
6. FAILURE TO PROVIDE PAID SICK
LEAVE
7. FAILURE TO REIMBURSE
EXPENSES
8. FAILURE TO TIMELY PAY ALL
WAGES DUE DURING
EMPLOYMENT
9. FAILURE TO TIMELY PAY ALL
WAGES DUE UPON TERMINATION
OF EMPLOYMENT

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- 10. VIOLATION OF THE UNFAIR COMPETITION LAW**
- 11. PAGA PENALTIES FOR FAILURE TO PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES**
- 12. PAGA PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS OR PAY IN LIEU THEREOF**
- 13. PAGA PENALTIES FOR FAILURE TO PROVIDE REST PERIODS OR PAY IN LIEU THEREOF**
- 14. PAGA PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
- 15. PAGA PENALTIES FOR FAILURE TO PROVIDE PAID SICK LEAVE**
- 16. PAGA PENALTIES FOR FAILURE TO REIMBURSE EXPENSES**
- 17. PAGA PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF EMPLOYMENT**
- 18. PAGA PENALTIES FOR FAILURE TO MAINTAIN RECORDS**
- 19. PAGA PENALTIES FOR MISCLASSIFICATION**

DEMAND FOR JURY TRIAL

1 Plaintiff ATTILA MOLNAR (“Plaintiff”), individually and on behalf of other similarly
2 situated and aggrieved employees, and as a Representative of the State of California’s Labor and
3 Workforce Development Agency (“LWDA”), hereby alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiff brings this proposed class action on behalf of himself and all similarly-
7 situated current and former non-exempt employees of ABA Protection, Inc., a California
8 corporation, and DOES 1 through 10 (collectively, “Defendants”) within the State of California
9 during the four years prior to the commencement of this action (“Class Period”). Plaintiff brings this
10 action for misclassification of himself and other similarly-situated employees as independent
11 contractors which resulted in the deprivation of the rights and protections afforded by the
12 California Labor Code. Specifically, Plaintiff brings this action for Defendants’ failure to: pay all
13 required wages for all hours worked, including all minimum, regular, overtime, and reporting
14 time wages; provide all lawful meal and rest periods and/or pay an hour’s worth of pay in lieu
15 thereof; provide adequate wage statements; provide paid sick leave; provide reimbursement of costs;
16 and timely pay all wages due during and upon separation of employment. Plaintiff also brings this
17 action for unfair competition under Business and Professions Code sections 17200, *et seq.*

18 2. Pursuant to Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent all
19 current and former non-exempt employees of Defendants who suffered one or more of the alleged
20 violations (“aggrieved employees”) as described herein during the applicable limitations period
21 for the time period covered by the PAGA (which is defined as any time from one year and 65
22 days prior to the commencement of this action until the commencement of trial in the matter).
23 The applicable limitations period is referred to herein as the “PAGA Period.”

24 3. Pursuant to Labor Code sections 2698, *et seq.*, Plaintiff also seeks to recover civil
25 penalties and reasonable attorney’s fees and costs. Plaintiff, by operation of law, has standing and
26 capacity to sue as a representative of the State of California. Plaintiff mailed written notice of the
27 specific provisions of the Labor Code that Defendants violated, including the facts and theories
28 to support the alleged violations, to the LWDA and to Defendant ABA PROTECTION, INC.

1 pursuant to Labor Code section 2699.3 on May 28, 2020. A true and correct copy of this notice
2 is attached as Exhibit A and incorporated by this reference. Defendants did not provide notice of
3 cure and the LWDA did not provide notice of investigation in the 65 days after the May 28, 2020
4 mailing of the PAGA notice.

5 **II.**

6 **JURISDICTION AND VENUE**

7 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
8 Civil Procedure section 395. Defendants conduct business in the city of Los Angeles, in the
9 County of Los Angeles, California and each Defendant is within the jurisdiction of this Court for
10 service of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and other
11 similarly-situated and aggrieved employees within the State of California and Los Angeles
12 County. Defendants employ numerous employees in Los Angeles County and in California
13 generally. There is no federal question at issue for removal under 28 U.S.C. section 1331, as the
14 issues herein are based solely on California statutes and law, including the Labor Code, IWC
15 Wage Orders, and the Code of Civil Procedure.

16 5. Plaintiff alleges, on information and belief, that no federal question is raised and
17 that the Class Action Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), does not apply, or in
18 the alternative, that exceptions for local case or controversy under the CAFA do apply and
19 prohibit removal of the action to federal court. Plaintiff is also informed and believes that based
20 on his rate of pay, his individual claims do not arise to the necessary amount in controversy so as
21 to implicate traditional jurisdiction under 28 U.S.C. section 1332(a) or jurisdiction under the
22 CAFA. Additionally, as a representative action under the PAGA, the matter is not subject to
23 removal under 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to
24 federal jurisdiction.

25 **III.**

26 **THE PARTIES**

27 6. Plaintiff Attila Molnar was employed by Defendants as a Security Guard in Los
28 Angeles County. He ended his employment in May 2020.

1 7. At all relevant times, Defendants hired Plaintiff and other similarly-situated and
2 aggrieved employees and misclassified them as “independent contractors,” even though the work
3 performed and conditions of employment were that of an employee.

4 8. Plaintiff alleges that he and all other security guards (including but not limited to
5 security officers, crowd control staff, security staff, and/or other similar job titles) were non-
6 exempt hourly employees in the State of California and worked under Defendants’ policies. As a
7 result, each worker suffered the same violations alleged herein.

8 9. Plaintiff was employed by the alleged violators and had one or more of the alleged
9 violations committed against him and, therefore, is properly suited to represent the interests of all
10 other current and former similarly-situated and aggrieved employees of Defendants.

11 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant ABA
12 Protection, Inc. is a California corporation that employs security guards and provides security
13 services to clients like hotels, apartment complexes, and event holders.

14 11. ABA protection entered into contracts and agreements with DOE Defendants to
15 provide security guard labor and/or services. ABA Protection and DOE Defendants knew or
16 should have known that the contracts and agreements did not include funds sufficient to allow
17 contractors to comply with all applicable local, state and federal laws governing the security guard
18 labor and services provided, as alleged herein.

19 12. Pursuant to California Labor Code sections 558 and 558.1, Defendants are
20 employers of Plaintiff, and/or persons acting on behalf of Plaintiff’s employer, who violated, or
21 caused to be violated, any provision regulating minimum wages or hours and days of work in the
22 applicable order of the Industrial Welfare Commission, as well as California Labor Code sections
23 203, 226, 226.7, 1193.6, 1194, and 2802.

24 13. At all times relevant ABA Protection, Inc. did, and does, transact and conduct
25 business in the state of California and within the jurisdiction of the Court. At all times relevant,
26 ABA Protection, Inc. was Plaintiff’s and other similarly-situated and aggrieved employees’
27 employer for purposes of the California wage and hour laws at issue in this action.

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14. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed and believes, and based on that alleges, that DOE Defendants are legally responsible for the wrongful conduct alleged, and sues these Defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

15. Plaintiff is informed and believes and, based thereon alleges, that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other similarly-situated and aggrieved employees, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

IV.

GENERAL ALLEGATIONS

16. At all relevant times, Plaintiff and similarly-situated and aggrieved current and former employees were employed by Defendants and each of them, including DOE Defendants, within the state of California.

17. At all relevant times, Defendants maintained common policies and practices applicable to Defendants' employees, including Plaintiff. These policies included the unlawful misclassification of employees as independent contractors, failing to pay all required wages for all hours worked, including all minimum, regular, overtime, and reporting time wages, failing to provide all lawful meal and rest periods and/or pay an hour's worth of pay in lieu thereof, failing to provide adequate wage statements, failing to provide paid sick leave, failing to provide reimbursement of costs, and failing to timely pay all wages due during and upon separation of employment, and by violating provisions of the labor code and California case law, also obtained an unfair advantage under Business and Professions Code sections 17200, *et seq.*

18. At all relevant times, Plaintiff and other similarly-situated and aggrieved employees of Defendants worked under these common policies and practices.

19. Defendants willfully misclassified Plaintiff and similarly-situated and aggrieved employees as independent contractors.

20. Defendants' usual course of business is the provision of security guards and other security-related staff to their clientele. Plaintiff and others similarly-situated and aggrieved were not working in an independently established trade, occupation, or business of the same nature.

21. At all relevant times, Plaintiff was not free from the control and direction of Defendants in connection with the performance of work, both under contract for the performance of work and in fact.

22. At all relevant times, Defendants held the right to exercise complete control over the manner and means of Plaintiff's and other similarly-situated and aggrieved employees' work. Defendants directed and controlled the way Plaintiff and other similarly-situated and aggrieved employees of Defendants performed their work and their schedule.

23. Defendants were also responsible for maintaining company records, including but not limited to maintaining time and payroll records.

24. Defendants dictated the location and time of the work to be performed. Defendants also dictated the rate of pay. Defendants had the authority to increase or decrease employees' rates of pay and to increase or decrease the number of hours worked. Defendants directed Plaintiff about what to wear, where to report, and upon arrival, what to do, including whom to report to, how to report hours worked, and when he was relieved of duty.

25. At all relevant times, Defendants held and exercised the authority to hire, fire, and discipline Plaintiff and other similarly-situated and aggrieved employees of Defendants.

26. Plaintiff is informed and believes and based thereon alleges that the employment practices and policies used by Defendants were created under the direction of Defendants. Plaintiff and others similarly-situated and aggrieved were required to follow the directions and policies implemented by Defendants.

27. On information and belief, Defendants created, set, and implemented the policies regarding payment of minimum wages, overtime wages, reporting time wages, and meal and rest period premiums that resulted in the failure to pay employees proper wages for all hours worked.

1 28. The California Labor Code and applicable IWC Wage Order and portions of the
2 California Code of Regulations provide that all persons employed in the State of California shall
3 be (1) presumed to be an hourly or non-exempt employee; (2) that all “hours worked” subject to
4 the control of the employer, whether exercised or not, are to be paid at least the minimum wage
5 as determined by the State of California, and for overtime wages at either one and a half times the
6 regular rate of pay or two times the regular rate of pay when “hours worked” exceed 8 hours in a
7 single day or shift, or over 40 hours in a 168-total hour workweek. Labor Code sections 1194, *et*
8 *seq.* provide that notwithstanding any agreement to work for a lesser wage, an employee receiving
9 less than the legal overtime or minimum wage compensation is entitled to recover in a civil action
10 the unpaid balance of their owed compensation, including interest thereon, reasonable attorneys’
11 fees, and costs of suit.

12 29. Plaintiff and all similarly-situated and aggrieved employees are covered under one
13 or more IWC Wage Orders (“Wage Orders”), and Labor Code section 510, and/or other applicable
14 wage orders, regulations, and statutes, and each similarly-situated and aggrieved employee was
15 not subject to an exemption for executive, administrative, professional employees, or any other
16 exemption, which imposed an obligation on the part of the Defendants to pay Plaintiff and
17 similarly-situated and aggrieved employees lawful minimum and overtime compensation, as well
18 as to provide statutory meal and rest periods.

19 30. Plaintiff and each similarly-situated and aggrieved employee worked in excess of
20 the maximum regular rate hours set by the IWC in the above Wage Orders, regulations, or statutes,
21 and are therefore entitled to appropriate overtime compensation at time and a half rates of their
22 regular rates of pay, and when applicable, double-time rates as set forth by the above Wage
23 Orders, regulations, and/or statutes.

24 31. During the relevant time period, Defendants maintained a common policy and
25 practice of failing to pay Plaintiff and other similarly-situated and aggrieved employees for all
26 hours worked.

27 32. Defendants did not pay Plaintiff and other similarly-situated and aggrieved
28 employees at the correct minimum wage rates pursuant to local ordinances. Instead, Defendants

1 paid them at a different lower rate, despite local ordinances requiring a higher minimum wage.
2 At times, Defendants did not even pay Plaintiff and other similarly-situated and aggrieved
3 employees at the applicable state minimum hourly wage.

4 33. On at least two occasions, Plaintiff and similarly-situated and aggrieved
5 employees were not paid at all for one week's wages. At times during the relevant time period,
6 ABA Protection issued paychecks one week later than the typical schedule. In doing so, it
7 included only two weeks' pay when three weeks' pay were due. As a result, it entirely failed to
8 pay any minimum, regular, overtime, or reporting time wages for hours worked.

9 34. Defendants did not pay Plaintiff and others similarly situated and aggrieved based
10 on actual hours worked. Instead, during the relevant time period, Defendants maintained a
11 common policy and practice of unlawfully rounding hours worked, including the beginning and
12 ending time of each shift.

13 35. The rounding policy operated unilaterally to the benefit of Defendants and to the
14 detriment of Plaintiff and other similarly-situated and aggrieved employees. The rounding policy
15 was not neutral on its face or in application, and in the aggregate, and over time caused a
16 cumulative loss of time to the employees and resulted in Defendants' failure to provide
17 compensation for all time actually worked. The Defendants had the ability to pay for the precise
18 hours of work but opted instead to utilize a rounding policy with no purpose other than to benefit
19 the Defendants and deprive employees of payment for all hours worked.

20 36. Upon information and belief, Plaintiff and other similarly-situated and aggrieved
21 employees worked in non-exempt, hourly positions, and during the relevant time period, each
22 was subject to the Defendants' rounding policy that resulted in underpayment of minimum,
23 regular, and overtime wages owed.

24 37. Defendants' rounding policy also resulted in the failure to pay all required
25 overtime wages when the rounding deducted from shifts worked in excess of 8 hours in one day,
26 or 40 hours in one workweek, and when the rounding deducted from shifts which otherwise would
27 have exceeded 8 hours in length or totaled 40 hours in one workweek.

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1 38. During the relevant time period, Defendants maintained a common policy and
2 practice of failing to pay all overtime wages for all overtime hours worked.

3 39. Plaintiff and other similarly-situated and aggrieved employees were eligible to
4 earn, and did earn, more than one hourly rate for non-overtime hours during the same workweek
5 and/or pay period.

6 40. During the same workweek and/or pay period, Plaintiff and each similarly-situated
7 and aggrieved employee regularly worked overtime hours exceeding 8 hours per day and/or 40
8 hours per workweek and also earned more than one hourly rate for non-overtime time hours.
9 Plaintiff and each similarly-situated and aggrieved employee were not paid at the correct overtime
10 rate of pay because all hourly rates paid for non-overtime hours were not included in their regular
11 rate of pay, as required by Labor Code sections 510 and 1194, and section 3 of the applicable
12 IWC wage order. Thus, the regular rate of pay was not properly calculated for purposes of
13 calculating the proper overtime payment. As a result, Defendants failed to pay all overtime wages
14 to Plaintiff and other similarly-situated and aggrieved employees.

15 41. At times during the relevant time period, Plaintiff and similarly-situated and
16 aggrieved employees were given the opportunity to work shifts in addition to the shifts they were
17 regularly assigned. These employees would accept these shifts and report to work. Upon reporting
18 to their shifts, Defendants would turn the employees away and would not furnish at least half of
19 the usual or scheduled day's work.

20 42. Defendants failed to pay Plaintiff and similarly-situated and aggrieved employees
21 at least half the usual or scheduled days' work, but no more than four hours of work, at their
22 regular rate of pay. As a result, Defendants failed to pay all reporting time wages to similarly-
23 situated and aggrieved employees, including Plaintiff, and violated the applicable Labor Code
24 governing the payment of wages.

25 43. During the relevant time period, Defendants did not maintain a compliant meal
26 period policy applicable to Plaintiff and other similarly-situated and aggrieved employees, nor
27 did they inform their employees, including Plaintiff, that they were permitted to take meal periods
28 as provided under the California Labor Code.

1 44. During the relevant time period, Plaintiff and other similarly-situated and
2 aggrieved employees were required to remain on duty at all times during their shifts. Plaintiff and
3 other similarly-situated and aggrieved employees were required to keep their cell phones on and
4 to respond to phone calls and texts at all times during their shift. The nature of their job did not
5 prevent them from being relieved of all duties.

6 45. Plaintiff and others similarly-situated and aggrieved were regularly not permitted
7 to take off-duty meal periods of at least thirty minutes and prior to the end of their fifth hour of
8 work. Instead, Plaintiff's and other similarly-situated and aggrieved employees' meal periods
9 were often less than thirty minutes, late, or completely missed because they were not relieved of
10 all duties in order to take a compliant meal period or were required to return to their work prior
11 to having taken a full thirty-minute meal period.

12 46. For the same reasons, Plaintiff and other similarly-situated and aggrieved
13 employees were also not provided an opportunity to take a second meal period when they worked
14 shifts greater than 10 hours.

15 47. During the relevant time period, the Defendants required Plaintiff and similarly-
16 situated and aggrieved employees to work without providing statutory meal periods and failed to
17 pay similarly-situated and aggrieved employees an hour's pay in lieu thereof.

18 48. Defendants did not authorize and permit off-duty rest periods of at least ten
19 minutes for every four hours or major fraction thereof worked as required by law. During the
20 relevant time period, Defendants did not maintain a compliant rest period policy applicable to
21 Plaintiff and other similarly-situated and aggrieved employees, nor did they inform their
22 employees, including Plaintiff, that they were permitted to take rest periods as provided under the
23 California Labor Code.

24 49. Plaintiff and other similarly-situated and aggrieved employees were not relieved
25 of all duty in order to take any rest periods. Defendants did not provide sufficient staff in order to
26 allow employees to be relieved of all duties. On some assignments, there was only one security
27 guard working, and as a result, no one was there to relieve Plaintiff and other similarly-situated
28 and aggrieved employees so that they could take a 10-minute duty-free rest break.

1 50. Instead, Plaintiff and other similarly-situated and aggrieved employees were
2 required to remain on duty during all rest periods and ready to respond to the needs of clients and
3 ABA Protection at a moment's notice.

4 51. During the relevant time period, the Defendants required Plaintiff and similarly-
5 situated and aggrieved employees to work without taking statutory rest periods and failed to pay
6 similarly-situated and aggrieved employees an hour's pay in lieu thereof.

7 52. During the applicable limitations period, the Defendants, by virtue of centralized
8 and uniform pay policies, failed to provide accurate, itemized wage statements to Plaintiff and
9 similarly-situated and aggrieved employees as required by Labor Code section 226. In fact,
10 Defendants did not provide any wage statements to Plaintiff and similarly-situated and aggrieved
11 employees. This failure to provide wage statements deprived Plaintiff and others similarly-
12 situated and aggrieved from being able to fully understand their hours worked, their pay received,
13 and the total amount of earnings owed or outstanding.

14 53. If Defendants did provide wage statements, they did not list the name and address
15 of the entity that was the employer, the total hours worked, all rates of pay and the corresponding
16 number of hours worked at each rate, the inclusive dates of the applicable pay period, the gross
17 and net wages, all deductions, or the last four digits of the employee's social security number,
18 and/or employee ID number.

19 54. Defendants further did not provide sick pay and sick leave based on the amounts
20 required by law. Defendants did not permit employees to accrue paid sick days at a rate of not
21 less than one hour per every 30 hours worked. They did not allow an alternative policy of accrual
22 of sick leave so that not less than 24 hours or three days of paid sick leave would be available to
23 the employee to be used by the completion of his or her 120th calendar day of employment. At
24 all relevant times, employees were not permitted to accrue the legally minimum amounts of sick
25 pay and as a result, were not provided proper sick leave and pay. In fact, Plaintiff and similarly-
26 situated and aggrieved employees accrued no sick time at all.

27 55. Plaintiff and other similarly-situated and aggrieved employees were required to
28 use their personal cell phones for necessary work tasks, including scanning checkpoints through

1 which they passed while on duty using a QR Code Reader application, making and answering
2 phone calls from ABA Protection and/or its clients, and sending and answering work-related text
3 messages.

4 56. Plaintiff and others similarly situated and aggrieved were not reimbursed for this
5 mandatory personal cell phone usage.

6 57. During the relevant time period, Defendants failed to record and maintain accurate
7 records of all hours worked. Defendants did not accurately record the beginning and ending time
8 of each shift, including all meal periods for Plaintiff and each similarly-situated and aggrieved
9 employee.

10 58. As a result of the failure to pay all minimum, regular, overtime, and reporting time
11 wages, as described herein, Defendants further failed to pay Plaintiff and all other similarly-
12 situated and aggrieved employees timely during employment as required by Cal. Labor Code
13 section 204.

14 59. Additionally, and independent of the claims for unpaid wages, Defendants did not
15 provide paychecks within at least seven days of the close of the pay period as required by
16 California Labor Code section 204(d). On at least two occasions, wages earned between the 1st
17 and the 15th of each month were paid on a date later than the 26th of each month, and wages
18 earned between the 16th and the end of the month were not paid by the 10th day of the following
19 month.

20 60. Defendants maintained a policy and practice of failing to pay all wages owed to
21 terminated employees within the requirements of Cal. Labor Code sections 201 and 202.
22 Defendants further maintained a policy and practice of failing to pay waiting time penalties
23 pursuant to Cal. Labor Code section 203 when they failed to comply with the requirements set
24 forth in Sections 201 and 202.

25 61. At the time of separation from employment and as alleged herein, Plaintiff and
26 similarly-situated and aggrieved employees were owed and continue to be owed minimum wages,
27 regular wages, overtime wages, reporting time wages, and meal and rest period premium wages
28 from Defendants for all hours worked. As a result, Plaintiff and other similarly-situated and

aggrieved employees are owed waiting time penalties.

62. Defendants have engaged in unfair business practices in California and willingly and knowingly have practiced, employed, and utilized the employment patterns and practices alleged in this complaint in violation of Business & Professions Code sections 17200, *et seq.* in an attempt to improperly lower the costs of doing business to gain an unfair economic advantage.

V.

CLASS ACTION ALLEGATIONS

63. Plaintiff brings this action on behalf of himself and all others similarly-situated as a class action pursuant to Code of Civil Procedure section 382. The members of the Plaintiff class are defined as follows:

All individuals who worked for Defendants in the State of California as “Independent Contractors” in the position of “Security Guard” or other similar job title at any time four years prior to the filing of this complaint until the time of trial in this action (the “Class” or “Plaintiff Class”).

64. Plaintiff seeks to certify a subclass of employees defined as follows:

Plaintiff Subclass One (“Minimum Wage Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, were subject to a policy of not being compensated for all hours worked or under Defendants’ control at the applicable minimum wage set by the state or local ordinance.

65. Plaintiff seeks to certify a subclass of employees defined as follows:

Plaintiff Subclass Two (“Reporting Time Pay Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, were subject to a policy of not being paid all “Reporting Time Wages” when employees showed up to work but were not furnished with at least half of their usual or scheduled day’s work.

66. Plaintiff seeks to certify a subclass of employees defined as follows:

Plaintiff Subclass Three (“Overtime Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, were subject to a policy of not being compensated for all hours worked or under Defendants’ control in excess of eight hours per day and/or forty hours per week at the applicable overtime wage.

67. Plaintiff seeks to certify a subclass of employees defined as follows:

Plaintiff Subclass Four (“Regular Rate of Pay Subclass”): All members of the Plaintiff Class in the State of California who, within the applicable limitations period, were subject to the policy and/or practice of failing to

include all applicable rates of pay into the regular rate of pay for purposes of calculating overtime premium pay.

68. Plaintiff seeks to certify a subclass of employees defined as follows:

Plaintiff Subclass Five (“First Meal Period Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, worked a shift of five hours or more and were subject to the policy and/or practice not to provide a compliant 30-minute meal period or one hour of pay at the employee’s regular rate of pay in lieu thereof.

69. Plaintiff seeks to certify a subclass of employees defined as follows:

Plaintiff Subclass Six (“Second Meal Period Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, worked a shift of ten hours or more and were subject to the policy and/or practice not to provide a compliant second 30-minute meal period or one hour of pay at the employee’s regular rate of pay in lieu thereof.

70. Plaintiff seeks to certify a subclass of employees defined as follows:

Plaintiff Subclass Seven (“Rest Period Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, worked a shift of 3.5 hours or more and were subject to the policy and/or practice not to provide a compliant rest period for every 4 hours worked, or major fraction thereof, or one hour of pay at the employee’s regular rate of pay in lieu thereof.

71. Plaintiff seeks to certify a subclass of employees defined as follows:

Plaintiff Subclass Eight (“Wage Statement Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, were subject to the policy and/or practice of not providing accurate itemized wage statements.

72. Plaintiff seeks to certify a subclass of employees defined as follows:

Plaintiff Subclass Nine (“Sick Pay Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, were subject to the policy and/or practice of not being provided with appropriate accrued sick pay.

73. Plaintiff seeks to certify a subclass of employees defined as follows:

Plaintiff Subclass Ten (“Reimbursement Subclass”): All members of the Plaintiff class who, within the applicable limitations period, were subject to Defendants’ business acts and/or practices regarding the failure to reimburse for reasonable and necessary cell phone expenses, and who, if said business acts and/or practices are found to be unlawful, unfair, and/or deceptive, are owed restitution.

74. Plaintiff seeks to certify a subclass of employees defined as follows:

Plaintiff Subclass Eleven (“Waiting Time Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment, and were subject to the Defendants’ policy and/or practice of failing to timely pay wages upon termination.

75. Plaintiff seeks to certify a subclass of employees defined as follows:

Plaintiff Subclass Twelve (“The UCL Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, are owed restitution as a result of Defendants’ business acts and practices to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

76. Plaintiff reserves the right under California Rules of Court, Rule 3.765(b) and other applicable law to amend or modify the class definition with respect to issues or in any other ways. Plaintiff is the Named Representative and is a member of the Plaintiff Class. Plaintiff seeks class-wide recovery based on the allegations set forth in this complaint. The Court can define the Plaintiff Class and create additional subclasses as may be necessary or desirable to adjudicate common issues and claims of the Plaintiff Class Members if, based on discovery of additional facts, the need arises.

77. As set forth in the Prayer, below, Plaintiff will move the Court to try the UCL Subclass Claims before the Court in Equity before trying the legal claims to a trier of fact in this action. See, *Hoopes v. Dolan* (2008) 168 Cal. App. 4th 146, 156-157; *Pellegrino v. Robert Half Intern., Inc.* (2010) 181 Cal. App. 4th 713 (“[B]etter practice” is for “the trial court [to] determine the equitable issues before submitting the legal ones to the jury.”). Same, *Hodge v. Superior Court* (2006) 145 Cal. App. 4th 278, 284 and *Nwosu v. Uba* (2004) 122 Cal. App. 4th 1229, 1238, 1244.

78. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Plaintiff Class is easily ascertainable through the records Defendants are required to keep.

79. Numerosity. The members of the Plaintiff Class are so numerous that individual joinder of all of them as Plaintiff is impracticable. While the exact number of the Class Members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that

1 there are more than 100 Class Members.

2 80. Commonality. Common questions of law and fact exist as to all Class Members
3 and predominate over any questions that affect only individual members of the Plaintiff Class.
4 These common questions include, but are not limited to:

- 5 a. Whether Defendants violated Labor Code section 226.8 and misclassified
6 Class Members as independent contractors?
- 7 b. Whether Defendants violated Labor Code sections 510, 1197, or 1194 by
8 failing to pay minimum, regular, and/or overtime wages for all hours worked,
9 including time subject to Defendants' control?
- 10 c. Whether Defendants failed to pay all wages by failing to pay all overtime
11 wages as a result of failing to properly calculate the regular rate of pay?
- 12 d. Whether Defendants rounding policy was neutral on its face and in
13 application?
- 14 e. Whether over a period of time and in the aggregate, Defendant's rounding
15 policy caused a cumulative loss of time to the Plaintiff Class?
- 16 f. Whether Defendants failed to pay all reporting time wages?
- 17 g. Whether Defendants violated Labor Code sections 512 and 226.7 by failing to
18 provide compliant first and second meal periods, or pay one hour of pay in lieu
19 thereof for each missed, untimely, or interrupted meal period?
- 20 h. Whether Defendants violated Labor Code 226.7 and section 11 of the
21 applicable IWC Wage Order regarding meal periods?
- 22 i. Whether Defendants violated Labor Code section 226.7 by failing to provide
23 compliant rest periods, or pay one hour of pay in lieu thereof for each missed,
24 untimely, or interrupted rest period?
- 25 j. Whether Defendants violated Labor Code section 226.7 and section 12 of the
26 applicable IWC Wage Order regarding rest periods?
- 27 k. Whether Defendants violated Labor Code section 226 regarding itemized
28 wage statements?

- 1 l. Whether Defendants violated Labor Code section 246 regarding paid sick
2 leave?
- 3 m. Whether the Plaintiff and each Plaintiff Class Member are entitled to
4 reimbursement for the costs and expenses incurred for the benefit of
5 Defendants?
- 6 n. Whether Defendants violated Labor Code sections 201 and/or 202 by not
7 paying Plaintiff Class Members who are no longer employed by Defendants
8 all earned wages, including straight-time wages and overtime wages, upon
9 their termination of employment? If so, whether such violations were “willful”
10 within the meaning of Labor Code section 203?
- 11 o. Whether Defendants violated Labor Code section 204 by not timely paying
12 Plaintiff Class Members all earned wages owed to them during their
13 employment?
- 14 p. Whether Defendants engaged in business acts or practices which violate
15 California’s Unfair Competition Law (“UCL”) as it relates to their policies and
16 practices as to wages and pay?
- 17 q. The effects and the extent of any injuries sustained by the Plaintiff Class and
18 Plaintiff Subclass Members and appropriate type and/or measure of damages;
- 19 r. The appropriateness and nature of relief to each Plaintiff Class and Subclass
20 Member;
- 21 s. The extent of liability of each Defendant to each Plaintiff Class and Subclass
22 Member.

23 81. Typicality. Plaintiff’s claims are typical of the claims of the other members of the
24 Plaintiff Class. Plaintiff and other members of the Plaintiff Class were subject to the same policies
25 and practices of Defendants resulting in underpayment for straight-time and overtime hours.
26 Defendants failed to provide accurate, itemized wage statements to Plaintiff and members of the
27 Plaintiff Class. Defendants did not provide for compliant meal or rest periods or pay premiums in
28 lieu thereof. Defendants also failed to pay all wages owed to Plaintiff and Plaintiff Class Members

1 upon termination of employment.

2 82. Adequacy. Plaintiff will adequately and fairly protect the interests of the members
3 of the Plaintiff Class. Plaintiff has no interest adverse to the interests of absent Plaintiff Class
4 Members. Plaintiff is represented by attorneys who have substantial class action experience in
5 wage-and-hour and class action law.

6 83. Superiority. A class action is superior to other available means for fair and efficient
7 adjudication of the claims of the Plaintiff Class and would be beneficial for the parties and the
8 Court. Class action treatment will allow a large number of similarly-situated persons to prosecute
9 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
10 duplication of effort and expense that numerous individual actions would require. The damages
11 suffered by each Plaintiff Class Member are relatively small in the sense pertinent to class action
12 analysis, and the expense and burden of individual litigation would make it extremely difficult or
13 impossible for the individual Plaintiff Class Members to seek and obtain individual relief. A class
14 action will serve an important public interest by permitting such individuals to effectively pursue
15 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
16 or contradictory judgments raised by individual litigation.

17 **VI.**

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM AND REGULAR WAGES FOR ALL HOURS
21 WORKED**

22 **(Labor Code §§ 204, 1194, 1194.2, 1197, & 1198; § 4 of the Applicable IWC Wage Order)
23 (On Behalf of Plaintiff and the Minimum Wage and Reporting Time Pay Subclasses
24 Against Each Defendant)**

25 84. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
26 herein.

27 85. Labor Code section 204 states: “All wages, other than those mentioned in Section
28 201, 201.3, 202, 204.1, or 204.2, 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.”

1 86. Labor Code section 1194 states: “Notwithstanding any agreement to work for a
2 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
3 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
4 of the full amount of his minimum wage or overtime compensation, including interest thereon,
5 reasonable attorney’s fees and costs of suit.”

6 87. Labor Code section 1194.2 states: “In any action under Section 1193.6 or Section
7 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by
8 an order of the commission, an employee shall be entitled to recover liquidated damages in an
9 amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision
10 shall be construed to authorize the recovery of liquidated damages for failure to pay overtime
11 compensation.”

12 88. Labor Code section 1197 states: “The minimum wage for employees fixed by the
13 commission is the minimum wage to be paid to employees, and the payment of a wage less than
14 minimum wage so fixed is unlawful.”

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

19 90. Section 4 of the applicable IWC Wage Order provides that an employer may not
20 pay employees less than the applicable minimum wage for all hours worked.

21 91. Section 5 of the applicable IWC Wage order states that: “(A) Each workday an
22 employee is required to report for work and does report, but is not put to work or is furnished less
23 than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the
24 usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4)
25 hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage; (B)
26 If an employee is required to report for work a second time in any one workday and is furnished
27 less than two (2) hours of work on the second reporting, said employee shall be paid for two (2)
28 hours at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

92. As set forth herein, Defendants willfully breached their obligation and failed to pay Plaintiff, the Plaintiff Class Members, the Minimum Wage Subclass, and the Reporting Time Pay Subclass all minimum and regular wages (including reporting time pay) for all hours worked all in violation of the Labor Code and the applicable Wage Order.

93. Defendants also subjected Plaintiff and other similarly-situated employees to an unlawful rounding policy. This policy was not neutral in application or on its face, and over time resulted in a loss of wages to Plaintiff and other similarly-situated employees. As a result of this rounding policy, Defendants failed to pay Plaintiff and other similarly-situated employees all minimum and regular wages for time spent working.

94. As a result of the unlawful acts of Defendants, Plaintiff, and the Plaintiff Class, the Minimum Wage Subclass, and the Reporting Time Pay Subclass he seeks to represent have been deprived of minimum and regular wages and/or other compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, liquidated damages in an amount equal to the wages unlawfully unpaid, attorneys' fees, and costs to the fullest extent permitted by law.

95. Plaintiff and the Plaintiff Class he seeks to represent request relief as described below.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

**(Cal. Labor Code §§ 510 & 1198; § 3 of the Applicable IWC Wage Order)
(On Behalf of Plaintiff and the Overtime and Regular Rate of Pay Subclasses
Against Each Defendant)**

96. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

97. 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.”

98. Section 3 of the applicable IWC Wage Order provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

99. As set forth herein, Defendants willfully breached their obligations to pay Plaintiff and Plaintiff Class Members all overtime wages for all overtime worked all in violation of Labor Code sections 510 and 1198, and the applicable Wage Order.

100. Additionally, for some shifts that would have required payment of overtime due to hours actually worked, Defendants rounded to their benefit and thus failed to pay all overtime wages otherwise due.

101. As a result of the unlawful acts of Defendants, Plaintiff and the Plaintiff Class, the Overtime Subclass, and the Regular Rate of Pay Subclass he seeks to represent have been deprived of overtime wages and/or other compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys’ fees, and costs.

102. Plaintiff and the Plaintiff Class he seeks to represent request relief as described below.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS OR PAY IN LIEU THEREOF (Cal. Labor Code §§ 226.7 & 512; § 11 of the Applicable IWC Wage Order) (On Behalf of Plaintiff and the First and Second Meal Period Subclasses Against Each Defendant)

103. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

104. At all relevant times, Plaintiff and all other members of the Plaintiff Class were employees of Defendants covered by Labor Code sections 226.7 and 512, and the applicable Wage Order.

105. Labor Code section 226.7 provides as follows:

(b) An employer shall not require any employee to work during any meal or rest... period mandated pursuant to... an applicable... order of the Industrial Welfare Commission.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare

Commission, 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 period or rest period is not provided.

106. Labor Code section 512(a) provides as follows:

An 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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. 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, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

107. Section 11(A) of the applicable Wage Order provides, in pertinent part: "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes..."

108. Section 11(B) of the applicable Wage Order provides, in pertinent part: "An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes..."

109. As set forth herein, Defendants failed to provide members of the First and Second Meal Period Subclasses with compliant meal periods as provided in Labor Code sections 226.7 and 512, and failed to pay them the additional pay at the employee's regular rate of compensation for each work day in lieu of providing off-duty meal period(s).

110. Defendants' policies are non-compliant because they did not, and do not, provide duty-free and uninterrupted meal periods of at least thirty minutes. Defendants' policies further failed to provide for premium wages in lieu of lawful meal periods.

111. As a result of Defendants' failure to comply with their obligations under Labor Code sections 226.7 and 512, and the applicable Wage Order, Plaintiff and the other members of the First and Second Meal Period Subclasses have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for the Defendants' failure to provide meal periods as required by the law.

///

112. Plaintiff and the Plaintiff Class, the First Meal Period Subclass, and the Second Meal Period Subclass he seeks to represent are entitled to recover the full amount of their unpaid additional pay for Defendants' failure to provide statutory meal periods as required by law. Pursuant to Labor Code section 218.6, Plaintiff and other members of the First and Second Meal Period Subclasses are entitled to recover prejudgment interest on the amount of the additional pay owed.

113. Plaintiff and the Plaintiff Class he seeks to represent request relief as described below.

FOURTH CAUSE OF ACTION

**FAILURE TO PROVIDE MANDATED REST PERIODS
OR TO PAY ADDITIONAL WAGES IN LIEU THEREOF
(Cal. Labor Code §§ 226.7 & 558; § 12 of the Applicable IWC Wage Order)
(On behalf of Plaintiff and the Rest Period Subclass Against Each Defendant)**

114. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

115. At all relevant times, Plaintiff and all other members of the Plaintiff Class were employees of Defendants covered by Labor Code section 226.7 and the applicable Wage Order.

116. Labor Code section 226.7 provides as follows:

(b) An employer shall not require any employee to work during any meal or rest... period mandated pursuant to... an applicable... order of the Industrial Welfare Commission.

(c) If an employee fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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 period or rest period is not provided.

117. 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."

118. Section 12(A) of the applicable Wage Order provides, in pertinent part:

"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 time shall be based on the total hours

1 worked daily at the rate of ten (10) minutes net rest time per four (4)
2 hours or major fraction thereof. However, a rest period need not be
3 authorized for employees whose total daily work time is less than three
4 and one-half (3 1/2) hours. Authorized rest period time shall be counted
as hours worked for which there shall be no deduction from wages.

5 119. Section 12(B) of the applicable wage order provides, in pertinent part: "If an
6 employer fails to provide an employee a rest period in accordance with the applicable provisions
7 of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular
8 rate of compensation for each workday that the rest period is not provided."

9 120. As set forth herein, Defendants failed to provide members of the Rest Period
10 Subclass with compliant rest periods as provided in Labor Code section 226.7 and failed to pay
11 them the additional pay at the employee's regular rate of compensation for each work day in lieu
12 of providing timely, off-duty rest period(s). Defendants' policies are non-compliant because,
13 among other reasons, they fail to state employees are entitled to timely off-duty paid rest periods
14 of at least ten minutes as required by law. Defendants' policies further required their employees
15 to remain on duty during part or all of the rest period. Defendants' policies further failed to
16 provide for premium wages in lieu of lawful rest periods.

17 121. As a result of Defendants' failure to comply with their obligations under Labor
18 Code section 226.7 and the applicable Wage Order, Plaintiff and the other members of the Rest
19 Period Subclass have suffered damages in an amount, subject to proof, to the extent they were not
20 paid additional pay owed for the Defendants' failure to provide rest periods as required by the
21 law.

22 122. At all times, Defendants engaged Plaintiff without having any policy to provide
23 compliant rest periods in the manner required by law, nor did the Defendants provide one hour of
24 pay in lieu of non-compliant rest periods.

25 123. Plaintiff and the Plaintiff Class and Rest Period Subclass he seeks to represent are
26 entitled to recover the full amount of their unpaid additional pay for Defendants' failure to provide
27 statutory rest periods as required by law. Pursuant to Labor Code section 218.6, Plaintiff and other
28 members of the Rest Period Subclass are entitled to recover prejudgment interest on the amount

1 of the additional pay owed.

2 124. Plaintiff and the Plaintiff Class he seeks to represent request relief as described
3 below.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
6 **(Labor Code §§ 226 & 1174; § 7 of the Applicable IWC Wage Order)**
7 **(On Behalf of Plaintiff and the Wage Statement Subclass Against Each Defendant)**

8 125. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
9 herein.

10 126. Labor Code section 226, subdivision (a) requires Defendants to itemize in wage
11 statements all deductions from payment of wages and to accurately report total hours worked by
12 Plaintiff and members of the Plaintiff Class. Defendants have knowingly and intentionally failed
13 to comply with Labor Code section 226, subdivision (a) on each and every wage statement that
14 should have been provided to Plaintiff and members of the Plaintiff Class.

15 127. Labor Code section 1174 requires Defendants to maintain and preserve, in a
16 centralized location, among other items, records showing the names and addresses of all
17 employees employed, payroll records showing the hours worked daily by, and the wages paid to,
18 their employees. Defendants have knowingly and intentionally failed to comply with Labor Code
19 section 1174.

20 128. Section 7 of the applicable Wage Order requires Defendants to maintain time
21 records showing, including but not limited to, when the employee begins and ends each work
22 period, meal periods, split shift intervals and total daily hours worked in itemized wage
23 statements, and must show all deductions from payment of wages, and accurately report total
24 hours worked by Plaintiff and members of the Plaintiff Class.

25 129. As set forth herein, Defendants failed to provide accurate itemized wage
26 statements reflecting all of the required information, including but not limited to gross wages
27 earned, net wages earned, the name and address of the employer, the total hours worked, all
28 applicable rates of pay and the total number of hours worked at each rate, all deductions, the last
four digits of the social security number and/or the employee ID number of the employee, and the

1 inclusive dates of the pay period, all in violation of Labor Code section 226.

2 130. Plaintiff and members of the Wage Statement Subclass suffered injuries as a result
3 of Defendants' intentional and knowing failure to provide to Plaintiff and the Plaintiff Class
4 Members accurate wage statements and to maintain the writings required by Labor Code section
5 226(a).

6 131. As a result of the unlawful acts of Defendants, Plaintiff and members of the Wage
7 Statement Subclass have suffered and continue to suffer substantial injuries, losses and actual
8 damages related to Defendants' violations, including lost wages, lost interest on such wages, and
9 expense and attorney's fees in seeking to compel Defendants to fully perform their obligations.

10 132. Accordingly, Plaintiff and the Plaintiff Class and Wage Statement Subclass he
11 seeks to represent request relief as described below, including statutory penalties up to the
12 maximum amount as permitted by law.

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE SICK PAY**

15 **(Labor Code § 246)**

16 **(On Behalf of Plaintiff and the Sick Pay Subclass Against Each Defendant)**

17 133. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
18 herein.

19 134. Labor Code section 246 grants the right to employees to paid sick days.
20 Specifically, Cal. Labor Code section 246(b) states that:

21 (1) An employee shall accrue paid sick days at the rate of not less than one
22 hour per every 30 hours worked, beginning at the commencement of
23 employment or the operative date of this article, whichever is later, subject
24 to the use and accrual limitations set forth in this section.

25 (2) An employee who is exempt from overtime requirements as an
26 administrative, executive, or professional employee under a wage order of
27 the Industrial Welfare Commission is deemed to work 40 hours per
28 workweek for the purposes of this section, unless the employee's normal
workweek is less than 40 hours, in which case the employee shall accrue
paid sick days based upon that normal workweek.

(3) An employer may use a different accrual method, other than providing
one hour per every 30 hours worked, provided that the accrual is on a regular
basis so that an employee has no less than 24 hours of accrued sick leave or
paid time off by the 120th calendar day of employment or each calendar
year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.

135. Labor Code section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee's wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

136. As described herein Defendants wholly failed to provide sick pay as required by Cal. Lab. Code section 246. Defendants also did not provide Plaintiff and other similarly-situated employees the proper written notice containing the correct amount of paid sick leave.

137. As a result of the unlawful acts of Defendants, Plaintiff and members of the Sick Pay Subclass have suffered and continue to suffer substantial injuries, losses and actual damages related to Defendants' violations, including lost wages, lost interest on such wages, and expense and attorney's fees in seeking to compel Defendants to fully perform their obligations.

138. Accordingly, Plaintiff and the Plaintiff Class and the Sick Pay Subclass he seeks to represent request relief as described below, including statutory penalties up to the maximum amount as permitted by law.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE EXPENSES

(Labor Code §§ 2802 & 2804)

(On Behalf of Plaintiff and the Reimbursement Subclass Against Each Defendant)

139. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

140. California Labor Code section 2802 requires employers to indemnify their employees for expenses and losses incurred while discharging their duties or in obedience to the directions of their employer.

141. California Labor Code section 2804 mandates that this statutory right cannot be waived.

142. As set forth herein, Defendants failed to properly reimburse and indemnify Plaintiff and members of the Reimbursement Subclass for all necessary expenditures or losses

1 incurred by the Plaintiff and members of the Reimbursement Subclass in direct consequence of
2 the discharge of their duties.

3 143. Plaintiff and members of the Reimbursement Subclass incurred losses in
4 obedience to the directions of Defendants. This included cell phone expenses related to
5 Defendants' instructions to download a specific application to scan checkpoints through which
6 these employees passed. This also included cell phone expenses incurred for necessary work-
7 related calling and texting. Defendants maintained no policy of reimbursement of such expenses
8 and refused to reimburse said expenses even though the employer knew of, and expected, that
9 these expenses would be incurred, for the benefit of the company.

10 144. As a direct result of Defendants' violation of California Labor Code section 2802,
11 Plaintiff and members of the Reimbursement Subclass suffered unpaid expenses, the use and
12 enjoyment of monies owed, lost interest on monies owed, and attorneys' fees in an amount to be
13 proven at the time of trial.

14 145. Defendants derive an unjust and inequitable economic benefit in failing to comply
15 with the law regarding indemnification and reimbursement of employees. For Defendants'
16 violations of California Labor Code section 2802, Plaintiff is entitled to and hereby seeks back-
17 owed reimbursement for cell phone usage, interest, statutory and equitable attorneys' fees, costs,
18 and applicable penalties in an amount to be proven at trial.

19 146. Plaintiff and the Plaintiff Class and the Reimbursement Subclass he seeks to
20 represent request relief as described below.

21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL WAGES DUE DURING EMPLOYMENT**
23 **(Labor Code §§ 204 and 210)**

24 **(On Behalf of Plaintiff and the Waiting Time Subclass Against Each Defendant)**

25 147. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
26 herein.

27 148. Labor Code section 204(a) states in pertinent part: "All wages . . . earned by any
28 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."

1 149. Labor Code section 210 states in pertinent part: “(a) In addition to, and entirely
2 independent and apart from, any other penalty provided in this article, every person who fails to
3 pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,
4 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
5 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation,
6 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
7 employee, plus 25 percent of the amount unlawfully withheld.”

8 150. As set forth herein, Defendants failed to pay Plaintiff and other aggrieved
9 employees all regular, minimum, overtime, and reporting time wages for all applicable hours of
10 work. Defendants did not pay Plaintiff and other aggrieved employees at the correct minimum
11 wage rates pursuant to local ordinance, instead paying employees at a different, lower rate.
12 Defendants also at times issued paychecks late which omitted weeks’ worth of time. At times,
13 Defendants did not even pay Plaintiff and other similarly-situated employees at the applicable
14 state minimum hourly wage.

15 151. Due to Defendants’ unlawful, non-neutral rounding policy, Plaintiff and other
16 aggrieved employees were not paid for all time worked, including in some instances, overtime
17 hours worked, when this time was rounded off, including at the beginning and end of their shifts.

18 152. Additionally, Defendants failed to pay reporting time wages when aggrieved
19 employees reported to work but were not furnished work or were furnished less than half of their
20 scheduled shift.

21 153. Defendants also failed to pay all overtime wages for overtime hours worked, only
22 paying the base hourly rate for overtime hours that should have been paid at one and one-half or
23 two times the regular rate of pay.

24 154. Defendants failed to properly calculate the regular rate of pay for purposes of
25 calculating overtime rates (time and one-half and double-time rates). Plaintiff and other aggrieved
26 employees were eligible to earn, and did earn, more than one base hourly rate in the same
27 workweek, and worked overtime during the same workweek in which they worked at more than
28 one base hourly rate. However, all remuneration was not properly calculated into the regular rate

1 of pay and as a result, overtime wages were not calculated using the correct regular rate of pay,
2 resulting in Plaintiff and other aggrieved employees not being paid all correct overtime wage
3 earned.

4 155. Thus, Defendants failed to pay Plaintiff and other aggrieved employees all wages
5 earned as set forth herein during their employment.

6 156. As a direct result of Defendants' violation of California Labor Code sections 204
7 and 210, Plaintiff and members of the Minimum Wage, Reporting Time Pay, Overtime, and
8 Regular Rate of Pay Subclasses suffered unpaid expenses, the use and enjoyment of monies owed,
9 lost interest on monies owed, and attorneys' fees in an amount to be proven at the time of trial.

10 157. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid
11 wages, penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible
12 including those permitted pursuant to Labor Code sections 204(a) and 210.

13 158. Plaintiff and the Plaintiff Class and the Minimum Wage, Reporting Time Pay,
14 Overtime, and Regular Rate of Pay Subclasses he seeks to represent request relief as described
15 below.

16 **NINTH CAUSE OF ACTION**
17 **FAILURE TO TIMELY PAY ALL WAGES DUE UPON TERMINATION OF**
18 **EMPLOYMENT**
19 **(Labor Code §§ 201-203)**
20 **(On Behalf of Plaintiff and the Waiting Time Subclass Against Each Defendant)**

21 159. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
22 herein.

23 160. Labor Code sections 201 and 202 require Defendants to pay employees all wages
24 due no later than 72 hours after resignation from employment, or immediately in the case of
25 discharge by the employer. Labor Code section 203 provides that if an employer willfully fails to
26 timely pay such wages, then the employer must, as a penalty, continue to pay the subject
27 employees' wages until the back wages are paid in full or an action is commenced. The penalty
28 cannot exceed 30 days of wages.

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1 161. Defendants willfully failed to timely pay wages to employees who were
2 voluntarily and/or involuntarily terminated from their employment within the time requirements
3 set forth in Cal. Labor Code sections 201 to 202. Plaintiff is informed and believes that
4 Defendants' pay practices are continuing such that current employees are not being timely paid
5 wages as they work in violation of law.

6 162. Plaintiff ended his employment in May 2020 and was not provided all of his wages
7 in his final paycheck. More than 30 days have passed since members of the Waiting Time
8 Subclass have left Defendants' employ.

9 163. As set forth herein, Plaintiff and the proposed Waiting Time Subclass are entitled
10 to compensation for unpaid minimum, regular, overtime, and reporting time wages, and premium
11 wages for non-compliant meal and rest periods but to date have not received such compensation.

12 164. As a consequence of Defendants' willful conduct in not paying wages owed,
13 certain members of the Plaintiff Class are entitled to 30 days' wages as a penalty under Labor
14 Code section 203 for failure to pay legal wages, with interest and attorneys' fees and costs.

15 165. Accordingly, Plaintiff and the Plaintiff Class and the Waiting Time Subclass he
16 seeks to represent request relief as described below, including statutory penalties up to the
17 maximum amount as permitted by law.

18 **TENTH CAUSE OF ACTION**

19 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

20 **(Business and Professions Code §§ 17200, *et seq.*)**

21 **(On Behalf of Plaintiff and the UCL Subclass Against Each Defendant)**

22 166. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
23 herein.

24 167. The failure to pay minimum, regular, overtime, including reporting time wages,
25 and meal and rest period premiums caused by Defendants' systematic and routine conduct
26 constituted unlawful, deceptive, and unfair business acts and/or practices within the meaning of
27 Business and Professions Code sections 17200, *et seq.*, including but not limited to a violation of
28 the applicable State of California Industrial Welfare Commission Wage Orders, regulations and
statutes, or a practice which is otherwise unfair, deceptive, and unlawful.

1 168. This cause of action is brought under Business and Professions Code sections
2 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action and
3 pursuant to Business and Professions Code section 17208, Plaintiff and members of the proposed
4 UCL Subclass seek restitution of premium wages and other pay owed, where such wages were
5 due during the Class Period, according to proof.

6 169. This cause of action is brought as a cumulative remedy as provided in Business
7 and Professions Code section 17205, and is intended as an alternative remedy for restitution for
8 Plaintiff, the “Minimum Wage Subclass,” the “Reporting Time Pay Subclass,” the “Overtime
9 Subclass,” the “Regular Rate of Pay Subclass,” the “First Meal Period Subclass,” the “Second
10 Meal Period Subclass,” the “Rest Period Subclass,” the “Sick Pay Subclass,” and the
11 “Reimbursement Subclass” for any portion of time commencing within three (3) years before
12 filing this complaint, and as the primary remedy for Plaintiff, and aforementioned Subclasses for
13 any portion of time during the *fourth year* before filing this Complaint, as this period of time
14 exceeds the general three-year statute of limitations on statutory wage claims, and is a basis for
15 restitution for all wage claims on an equitable basis and subject to court adjudication.

16 170. As a result of Defendants’ unlawful and unfair business practice of failing to pay
17 minimum, regular, overtime, and reporting time wages for all applicable hours worked, failing to
18 pay premium wages for non-compliant meal and rest periods, failing to provide all meal and rest
19 periods, failing to provide paid sick leave, and failing to reimburse expenses as a matter of policy,
20 Plaintiff and each member of the proposed “Minimum Wage Subclass,” the “Reporting Time Pay
21 Subclass,” the “Overtime Subclass,” the “Regular Rate of Pay Subclass,” the “First Meal Period
22 Subclass,” the “Second Meal Period Subclass,” the “Rest Period Subclass,” the “Sick Pay
23 Subclass,” and the “Reimbursement Subclass” have suffered damages and are entitled to
24 restitution in an amount according to proof for a time period of four years prior to the filing of
25 this Complaint and until such time as (1) Defendants cease their unlawful business practices, (2)
26 the commencement of trial, and/or (3) a date otherwise determined by the Court pursuant to the
27 laws of California.

28 ///

171. Plaintiff, on behalf of himself and the proposed UCL Subclass, requests the violations of each Defendant be enjoined, and other equitable relief provided, as this court deems proper, including an order requiring Defendants to make tax contributions on the accrued wages in the form of FICA, Social Security, Medicare, Unemployment Insurance, or other appropriate payments. Defendants' conduct, business acts, and practices undermined competition and were done in order to avoid costs other lawful employers comply with in order to avoid payment of full compensation, wages, and statutory penalties owed.

172. Plaintiff and the members of the UCL Subclass he seeks to represent request relief as described below, including restitution owed, in an amount according to proof, and for reasonable costs of suit and reasonable attorney's fees as provided by the Labor Code, Code of Civil Procedure section 1021.5, or other applicable law.

ELEVENTH CAUSE OF ACTION

PAGA PENALTIES FOR FAILURE TO PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES

**(Labor Code §§ 510, 1194, 1197, 1198, and the Applicable IWC Wage Order)
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)**

173. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

174. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law, any provision of this 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."

175. Labor Code section 2699(f)(2) states: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved

employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

176. As set forth herein, Defendants willfully breached their obligation and failed to pay Plaintiff and other aggrieved employees all minimum, regular and overtime wages (including reporting time pay) for all hours worked all in violation of the Labor Code and the applicable Wage Order.

177. Defendants’ conduct violated Labor Code sections 510, 1198, and 1197 as well as the “Hours and Days of Work” and “Minimum Wages” sections of the applicable Wage Order.

178. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2), 1197.1, and 2699(a) and (f)(2), and recoverable in an amount according to proof.

179. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. 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.

TWELFTH CAUSE OF ACTION

PAGA PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS OR PAY IN LIEU THEREOF

(Labor Code §§ 226.7, 512, and the Applicable IWC Wage Order) (On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

180. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

181. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to 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.

182. As set forth herein, Defendants failed to provide Plaintiff and other aggrieved employees with compliant meal periods as provided in Labor Code sections 226.7 and 512, and

1 failed to pay them the additional pay at the employee's regular rate of compensation for each
2 work day in lieu of providing off-duty meal period(s).

3 183. Defendants' conduct violated Labor Code sections 226.7, 512, and 1198, as well
4 as the "Meal Periods" section of the applicable IWC wage Order. As a result, Plaintiff is entitled
5 to recover, civil penalties and pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a), or in
6 the alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

7 184. Plaintiff, as a representative of the general public, will and does seek to recover
8 any and all penalties for each and every violation, in an amount according to proof, as to those
9 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
10 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
11 California.

12 **THIRTEENTH CAUSE OF ACTION**

13 **PAGA PENALTIES FOR FAILURE TO PROVIDE REST PERIODS OR PAY IN**
14 **LIEU THEREOF**

15 **(Labor Code §§ 226.7, 558, and the Applicable IWC Wage Order)**
16 **(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)**

17 185. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
18 herein.

19 186. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of
20 civil penalties for violations of the labor code, to be recovered through a civil action brought by
21 an aggrieved employee on behalf of himself or herself and other current or former employees
22 pursuant to the procedures specified in Section 2699.3.

23 187. As set forth herein, Defendants failed to provide Plaintiff and other aggrieved
24 employees with compliant rest periods as provided in Labor Code section 226.7 and failed to pay
25 them the additional pay at the employee's regular rate of compensation for each work day in lieu
26 of providing timely, off-duty rest period(s).

27 188. Defendants' conduct violated Labor Code section 226.7 and 1198 as well as the
28 "Rest Periods" section of the applicable Wage Order. As a result, Plaintiff is entitled to recover
civil penalties and pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a), or in the

alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

189. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. 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.

FOURTEENTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code § 226 and the Applicable IWC Wage Order)
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

190. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

191. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements wages earned, all deductions from payment of wages and to accurately report total hours worked and all rates of pay. Defendants have knowingly and intentionally failed to comply with Labor Code section 226(a) by failing to provide adequate wage statements to Plaintiff and other aggrieved employees.

192. Labor Code section 226.3 provides for civil penalties for violations of Labor Code section 226. The civil penalty is \$250 for the initial violation and \$1000 for each subsequent violation.

193. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to 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.

194. As alleged herein, Defendants failed to provide adequate wage statements and thus violated Labor Code section 226(a).

195. Additionally, with respect to any wage statements which were issued, Defendants failed to list the gross wages earned, net wages earned, the name and address of the employer, the

total hours worked, all applicable rates of pay and the total number of hours worked at each rate, all deductions, the last four digits of the social security number and/or the employee ID number of the employee, and the inclusive dates of the pay period, all in violation of Labor Code section 226.

196. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for civil penalties as required by Labor Code section 226.3 and 2699(a), or in the alternative, section 2699(f)(2), as well as attorney's fees and costs, all recoverable in an amount according to proof.

197. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. 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.

FIFTEENTH CAUSE OF ACTION

PAGA PENALTIES FOR FAILURE TO PROVIDE PAID SICK LEAVE (Labor Code §§ 246, 248.5 and the Applicable IWC Wage Order) (On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

198. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

199. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to 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.

200. As described herein Defendants wholly failed to provide sick pay as required by Cal. Lab. Code section 246. Defendants also did not provide Plaintiff and other aggrieved employees the proper written notice containing the correct amount of paid sick leave.

201. Defendants' conduct violated Labor Code sections 246 and 248.5, as well as the applicable IWC Wage Order. As a result, Plaintiff is entitled to recover civil penalties and pursuant to Labor Code sections 2699(a), or in the alternative, section 2699(f)(2), attorney's fees,

1 expenses, and costs of suit.

2 202. Plaintiff, as a representative of the general public, will and does seek to recover
3 any and all penalties for each and every violation, in an amount according to proof, as to those
4 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
5 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
6 California.

7 **SIXTEENTH CAUSE OF ACTION**

8 **PAGA PENALTIES FOR FAILURE TO REIMBURSE EXPENSES**

9 **(Labor Code §§ 2802 and 2804)**

10 **(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)**

11 203. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
12 herein.

13 204. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of
14 civil penalties for violations of the labor code, to be recovered through a civil action brought by
15 an aggrieved employee on behalf of himself or herself and other current or former employees
16 pursuant to the procedures specified in Section 2699.3.

17 205. As set forth herein, Defendants failed to properly reimburse and indemnify
18 Plaintiff and other aggrieved employees for all necessary expenditures or losses incurred by the
19 Plaintiff and other aggrieved employees in the discharge of their duties, including expenses
20 incurred in the mandatory business use of their personal cell phones.

21 206. Defendants' conduct violated Labor Code sections 2802, as well as the applicable
22 IWC Wage Order. As a result, Plaintiff is entitled to recover civil penalties and pursuant to Labor
23 Code sections 2699(a), or in the alternative, section 2699(f)(2), attorney's fees, expenses, and
24 costs of suit.

25 207. Plaintiff, as a representative of the general public, will and does seek to recover
26 any and all penalties for each and every violation, in an amount according to proof, as to those
27 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
28 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
California.

SEVENTEENTH CAUSE OF ACTION

**PAGA PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE DURING AND
UPON TERMINATION OF EMPLOYMENT
(Labor Code §§ 201, 201.3, 202, 203, 204, 256, 1198, and 2699 and the “Minimum Wages”
Section of the Applicable Wage Order)
(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)**

208. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

209. Labor Code section 210(a) provides: “(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 Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, 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, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

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

211. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to 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.

212. As set forth herein, Defendants failed to pay Plaintiff and other aggrieved employees all regular, minimum, overtime, and reporting time wages for all applicable hours of work during their employment.

213. Defendants also regularly failed to timely pay final wages to separated employees, and when Defendants did pay timely, Defendants nevertheless failed to pay timely because they did not pay all wages earned as set forth herein. Defendants further failed to pay all applicable waiting time penalties in violation of Cal. Labor Code section 203.

214. Defendants’ conduct violated several provisions of the Labor Code, as listed, as well as the applicable IWC Wage Order. As a result, Plaintiff is entitled to recover civil penalties

1 and pursuant to Labor Code sections 210, 256, 2699(a), or in the alternative, section 2699(f)(2),
2 attorney's fees, expenses, and costs of suit.

3 215. Plaintiff, as a representative of the general public, will and does seek to recover
4 any and all penalties for each and every violation, in an amount according to proof, as to those
5 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
6 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
7 California.

8 **EIGHTEENTH CAUSE OF ACTION**

9 **PAGA PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS IN
10 VIOLATION OF LABOR CODE**

11 **(Labor Code §§ 1174 and 1198)**

12 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

13 216. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
14 herein.

15 217. Labor Code section 1174(d) requires each employee to "[k]eep, at a central
16 location in the state or at the plants or establishments at which employees are employed, payroll
17 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
18 units earned by and any applicable piece rate paid to, employees employed at the respective plants
19 or establishments."

20 218. The "Records" section of the applicable IWC wage order requires each employer
21 to maintain "[t]ime records showing when the employee begins and ends each work period. Meal
22 periods, split shift intervals and total daily hours worked shall also be recorded."

23 219. California Labor Code section 1174.5 imposes a \$500 civil penalty for any failure
24 to maintain records required by Section 1174(d).

25 220. Labor Code section 2699(a) and 2699(f) provides (for assessment and collection
26 of civil penalties for violations of the labor code, to be recovered through a civil action brought
27 by an aggrieved employee on behalf of himself or herself and other current or former employees
28 pursuant to the procedures specified in Section 2699.3.

29 221. Defendants failed to maintain all records accurately as required by law, including
30 but not limited to the beginning and ending time of each work period and meal period.

222. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code section 1174.5 and 2699(a), or in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

223. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. 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.

NINETEENTH CAUSE OF ACTION

**PAGA PENALTIES FOR MISCLASSIFICATION OF EMPLOYEES AS
INDEPENDENT CONTRACTORS**

(Labor Code §§ 226.8 and 2699)

(On Behalf of Plaintiff and each Aggrieved Employee Against Each Defendant)

224. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

225. Labor Code section 226.8 states in pertinent part:

(a) It is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an individual as an independent contractor.

(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

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226. Labor Code section 2699(a) and 2699(f) provides (for assessment and collection of civil penalties for violations of the labor code, to 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.

227. As set forth herein, Defendants willfully misclassified employees as Independent Contractors

228. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 226.8 and 2699(a), or in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

229. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. 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.

VII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Attila Molnar, on behalf of himself and all other similarly-situated and aggrieved employees, prays for judgment only as to those remedies which are permissible in superior court or district court and not subject to being compelled to arbitration as follows:

a. For certification of this action as a class action pursuant to Code of Civil Procedure section 382;

b. For appointment of Plaintiff as the representative of the Plaintiff Class and Subclasses;

c. For appointment of counsel for Plaintiff as Class Counsel;

d. For an order bifurcating the action into liability and damages stages, or as otherwise efficient for the administration of justice;

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1 e. On the First and Second Causes of Action, for unpaid minimum wages, reporting
2 time pay, and/or overtime wages as required by Labor Code sections 1194 to 1197, in an amount
3 according to proof;

4 f. On the First and Second Causes of Action, for liquidated damages under Labor
5 Code section 1194.2 for each “Minimum Wage,” “Overtime Wage,” and “Regular Rate of Pay”
6 Subclass Member for unpaid minimum wages under Labor Code section 1194;

7 g. On the Third Cause of Action, for unpaid Premium Wages for non-compliant meal
8 periods at one hour of regular rate of pay to each “First Meal Period” and “Second Meal Period”
9 Subclass Member pursuant to Labor Code sections 226.7 and 512, and Section 11 of the
10 applicable Wage Order;

11 h. On the Fourth Cause of Action for unpaid Premium Wages for non-compliant rest
12 periods at one hour of regular rate of pay to each “Rest Period” Subclass Member pursuant to
13 Labor Code section 226.7 and Section 12 of the applicable Wage Order;

14 i. On the Fifth Cause of Action for statutory damages and penalties under Labor
15 Code sections 226(e) and (g), to the extent provided by law, up to a maximum of \$4,000.00 per
16 “Wage Statement” Subclass Member, in an amount according to proof;

17 j. On the Sixth Cause of Action, for unpaid sick pay, interest, and an injunction
18 against the unlawful practice of providing no paid sick leave to qualified employees;

19 k. On the Seventh Cause of Action, for reimbursement of unpaid expenses incurred
20 as a result of the use of cell phones at the direction of, and for the benefit of, Defendants, pursuant
21 to Labor Code section 2802;

22 l. On the Eighth Cause of Action, for statutory damages of up to 30 days of pay at
23 the regular rate of pay for failing to timely remit payment of wages to former employees in the
24 “Waiting Time Subclass” pursuant to Labor Code sections 201 to 203, in an amount according
25 to proof;

26 m. On the Ninth Cause of Action, for the UCL Subclass, to recover all restitution for
27 minimum, regular, overtime, and reporting time wages, meal and rest period premiums, and any
28 other form of wages, as well as expense reimbursements that were not paid to members of the

UCL Subclass during the Class Period as a result of conduct of all Defendants. Said restitution may be calculated in accordance with California Business and Professions Code sections 17203 and 17204, including trial of UCL claims by the Court in equity before legal claims, in an amount according to proof;

n. For maintenance of this claim as a Representative Action under the PAGA, and providing Plaintiff and his counsel with all enforcement capability as if this action had been instituted by the Division of Labor Standards Enforcement ("DLSE").

o. For recovery of civil penalties as permitted by Labor Code sections 2699.3, 1197.1, and 558(a)(1)-(2) in an amount according to proof^[A1];

p. For recovery of civil penalties as permitted by Labor Code sections 210, for failing to pay wages timely during employment;

q. For recovery of civil penalties as permitted by Labor Code section 226.8, for misclassifying employees as Independent Contractors;

r. For recovery of civil penalties as permitted by Labor Code section 226.3, for failing to provide accurate itemized wage statements, in an amount to be assessed and according to proof;

s. For recovery of civil penalties as permitted by Labor Code section 256 for failing to provide all earned wages timely to employees upon separation of employment;

t. For recovery of civil penalties as permitted by Labor Code section 1174 and 1174.5 for failing to maintain records;

u. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the extent that Section 2699(a) does not apply and/or where a statutory civil penalty is not provided, including but not limited to failing to comply with Labor Code sections 201-203, 226, 226.7, 246, 1174, 1198, and 2802.

v. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as to any restitution recovery;

w. For Attorneys' fees and costs of suit, including expert fees and fees pursuant to California Labor Code sections 218.5, 1194, and/or Code of Civil Procedure section 1021.5 on a

1 public benefit theory; and all other applicable state laws;

2 x. For injunctive relief; and

3 y. Such other legal equitable relief as this Court deems necessary, just, equitable and
4 proper.

5 COHELAN KHOURY & SINGER

7 Dated: August 5, 2020

6 By:  _____

8 Kristina De La Rosa
Counsel for Plaintiff Attila Molnar

9
10 **VIII.**

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff demands a jury trial of all claims triable as of right by jury.

13 COHELAN KHOURY & SINGER

15 Dated: August 5, 2020

14 By:  _____

16 Kristina De La Rosa
Counsel for Plaintiff Attila Molnar

EXHIBIT A

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC•

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

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JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

May 28, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

ABA Protection Inc.

26035 Bouquet Canyon Rd., #321

Santa Clarita, CA 91350

Re: NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION 2699.3

This letter shall serve as Mr. Attila Molnar's (hereafter "Claimant") *Notice* pursuant to the California Private Attorneys General Act ("PAGA"), California Labor Code sections 2698, *et seq.* regarding his wage and hour claims against ABA Protection Inc. (referred to herein as "ABA Protection" or "the Employer"). Claimant submits this notice on behalf of himself and all current and former exempt and/or non-exempt employees in California (including but not limited to security guards) who during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees"). Aggrieved employees include all individuals classified as independent contractors and who should have been properly classified as employees.

Claimant and other aggrieved employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violations of the Labor Code as set forth below.

FACTUAL ALLEGATIONS

ABA Protection provides security services to third-party clients. Claimant has worked for ABA Protection as a security guard from approximately September 22, 2019 until May 2020.

At all relevant times at least one year prior to the date of this Notice, the Employer subjected Claimant and aggrieved employees to policies and practices which caused the violations of the Labor Code as described herein.

The Employer knowingly misclassified Claimant and other employees as Independent Contractors. Indeed, at all relevant times, Claimant and other aggrieved employees were employees and should have been afforded the protections of the Labor Code, including the provisions of meal and rest periods, minimum wage for each hour worked, and the payment of overtime wages for all overtime hours worked. At all times relevant, the Employer controlled and directed the performance of work, both under contract and in fact. The Employer at all times had

the authority to set the hours of work, the location of work, the rate of pay, and had the authority to hire, discipline, and terminate work. Additionally, Claimant and other aggrieved employees performed work as security guards, which was within the usual course of the Employer's business. Claimant and others aggrieved were not engaged in an independently established business of the same nature.

The Employer failed to pay Claimant and aggrieved employees all minimum, regular, and overtime wages for all applicable hours of work. The Employer did not pay Claimant and other aggrieved employees at the correct minimum wage rates pursuant to local ordinance. Instead, it paid them at a different lower rate, despite local ordinances requiring a higher minimum wage. At times, the Employer did not even pay Claimant and other aggrieved employees at the applicable state minimum wage.

The Employer failed to pay all regular, minimum, and overtime wages to Claimant and other aggrieved employees for time spent working under the direction and control of the Employer. The Employer issued paychecks late. In doing so, rather than paying all wages owed for all outstanding hours worked, the Employer entirely omitted weeks' worth of time. For example, in March 2020, the Employer issued paychecks one week late, paying Claimant and other aggrieved employees for two weeks of work when three weeks of work were outstanding, failing to pay one whole workweek's wages. The Employer not only failed to pay all minimum, regular, and overtime wages but also failed to pay wages timely.

Additionally, the Employer failed to pay reporting time wages when aggrieved employees reported to work but were not furnished work or were furnished less than half of their scheduled shift. Claimant and other aggrieved employees received notifications from the Employer when additional work assignments were available. Often, aggrieved employees would report to work for a scheduled shift but would not be provided at least half of the scheduled day's work. Employees who reported for these assignments were either not furnished work, or were provided less than half of the day's scheduled work. The Employer did not pay at least half of the usual or schedule's days work (at least two hours, but not more than four) at the regular rate of pay. As a result, the Employer failed to pay all required reporting time wages, in violation of California law.

The Employer further failed to pay all overtime wages for all overtime hours worked. The Employer failed to pay premium wages for overtime hours worked. It did not pay one- and one-half times the regular rate of pay or two time the regular rate of pay for all applicable hours worked. Instead, it paid a base hourly rate for all hours worked.

Furthermore, the Employer failed to properly calculate the regular rate of pay for purposes of calculating overtime rates (time and a half- and double-time rates). Claimant and other aggrieved employees were eligible to earn, and did earn, more than one base hourly rate in the same workweek. Claimant and other aggrieved employees worked overtime during the same workweek in which they worked at more than one base hourly rate. However, all remuneration was not properly calculated into the regular rate of pay and as a result overtime wages were not calculated using the correct regular rate of pay. Thus, the Employer failed to pay all overtime wages.

The Employer subjected Claimant and other aggrieved employees to policies and practices which failed to provide compliant meal and rest periods. The Employer did not maintain a meal and rest period applicable to Claimant and other aggrieved employees. Claimant and other aggrieved employees were not provided an opportunity for each shift of five hours or more to take one thirty-minute uninterrupted, duty-free meal period. Claimant and other aggrieved employees were also not provided an opportunity to take a second uninterrupted, off-duty, thirty-minute meal period on shifts lasting more than 10 hours. Claimant and other aggrieved employees were not instructed by the Employer to clock out for meal periods and to perform no work. As a result, Claimant and other employees did not clock out for meal periods and were not relieved of all duty.

Claimant and other aggrieved employees were also not informed of their right to take rest periods and they were not authorized or permitted to take off-duty rest periods of at least 10 minutes. The Employer never paid one hour of wages at a regular rate of pay for non-compliant rest and meal periods, as required by Labor Code section 226.7 and sections 11 and 12 of the applicable IWC Wage Order.

The Employer additionally failed to provide any wage statements to Claimant and other aggrieved employees. As a result, Claimant and other aggrieved employees did not receive itemized wage statements which accurately set forth their net and gross wages earned, the inclusive dates of the pay period, total hours worked, all applicable rates of pay and the hours worked at each rate, the name and address of the entity that was the employer, the employee ID number and/or the last four digits of the employee's social security number, and all deductions.

The Employer failed to maintain an adequate reimbursement policy and further failed to inform aggrieved employees of their right to seek reimbursement for all costs and expenses. During his employment, the Employer required Claimant, and other aggrieved employees, to incur necessary business-related expenditures in direct consequence of the discharge of their duties for the Employer. Claimant and other aggrieved employees were required to use their personal cell phone for business calls and messaging and other work-related communications. The Employer also required aggrieved employees to utilize a QR Code Reader application on their personal cell phones in order to scan checkpoints through which they passed throughout their shifts. Additionally, the Employer required Claimant and other aggrieved employees to clock in and out on the Employer's website using their personal cell phones. The use of their cell phone was necessary for the discharge of their duties. The Employer did not reimburse Claimant and other aggrieved employees for these necessary expenditures incurred in the direct consequence of the discharge of their duties as employees of the Employer, in violation of California law.

During his employment, Claimant was not paid all wages within the time set forth in Labor Code section 204 due to the failure to pay all minimum, regular, and overtime wages and all meal and rest period premium wages as described herein.

Additionally, and independent from the claims described above, during Claimant's employment, the Employer failed to pay all wages timely pursuant to the time frames set forth in Cal. Labor Code sections 204(a) or (d). Specifically, payment of wages occurred more than seven days after the close of the pay period as well as after the days set forth in Section 204(a).

Additionally, the Employer failed to pay Claimant and aggrieved employees within the time required because it did not pay all wages earned as set forth herein. Claimant is informed and believes that the Employer has no policy and/or practice to comply with Labor Code sections 201, 202, and 203 as to all separated employees in California by timely paying final wages and paying waiting time penalty wages when failing to timely pay final wages. On information and belief, Claimant maintains that the Employer maintained a regular practice of failing to pay separated employees within the time requirements of Labor Code sections 201- 203. Even if it did provide employees with the final pay check within the time frame required, it nevertheless failed to pay timely because it did not pay all wages earned as set forth herein. As a result, the Employer is liable for civil penalties for its violation of Sections 202, 202, and 203.

The Employer also did not pay a day's wages for every day final pay was not paid through the date final wages were paid, as required by Labor Code section 203. Thus, aggrieved employees are owed civil penalties due to the Employer's violation of Cal. Labor Code section 203.

Additionally, the Employer provided employees to perform security work for other entities. Claimant contends that the Employer routinely entered into contract for labor with other entities, and knew or should have known that the contract for labor did not include funds sufficient to allow the Employer to comply with all applicable state, federal and local laws governing the labor and services.

Because of this knowing failure to enter into a contract allocating sufficient funds, Claimant and other aggrieved employees suffered injuries from the resulting violations of the labor code, unpaid wages, interest, attorney's fees and costs. The Employer's clients are liable with the Employer for the injuries suffered by Claimant and aggrieved employees, in addition to the resulting penalties afforded by Sections 2810(g)(1) and 2699, *et seq.* The names of the Employer's clients are currently unknown to Claimant. Claimant reserves the right to amend this PAGA notice once he has learned the names of the clients.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 510, 1194, and 1197 and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

The Employer failed to pay all minimum, regular, and overtime wages required by law.

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 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

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

Pursuant to the “Reporting Time Pay” section of the applicable Wage Order, “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

As set forth in detail above, the Employer violated Labor Code sections 510, 1194, and 1197, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved employees all minimum, regular, and overtime wages for all hours worked.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.2, 226.7, and 512(a), and the “Meal Periods” and “Rest Periods”
Sections of the Applicable Wage Order)

As set forth herein, during the time that Claimant performed work for the Employer, the Employer did not provide Claimant and other aggrieved employees all lawful and compliant meal periods. As a result, Claimant and other aggrieved employees were not authorized and permitted to take a thirty-minute, uninterrupted, off-duty meal period. Claimant and other aggrieved employees were required to work through their meal periods and were not permitted to leave the premises during meals. Additionally, compliant off-duty rest periods were not provided as required by the California Labor Code. Accordingly, the Employer denied Claimant and other aggrieved employees compliant meal and rest periods and the meal and rest premiums due to them under the law.

Labor Code section 226.7(c) states: “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Consequently, Claimant is entitled to receive a one-hour wage premium for each day a compliant meal period was not provided and a one-hour wage premium for each day a compliant rest period was not provided. Claimant intends to pursue all remedies, including recovery of wages, interest, attorney’s fees and costs, and penalties to the extent allowed by law.

Labor Code section 512(a) states: “An 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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. 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, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Labor Code section 226.7(b) states: “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

Pursuant to the “Meal Period” Section of the applicable IWC Wage Order, no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period will be waived by mutual consent of the employer and the employee. If an employer fails to provide an employee a meal 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 for each workday that the meal period is not provided.

Pursuant to the “Rest Period” Section of the applicable Wage Order, 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.

As set forth above, the Employer denied Claimant and other aggrieved employees meal and rest periods due to them under the law. Consequently, the Employer must pay one hour of wages for each day a proper meal period was not properly provided and one hour of wages for each day a rest period was not properly provided. This applies to Claimant and all other aggrieved employees who were not provided with legally compliant meal periods and rest breaks.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Labor Code §§ 246(i), 226(a), 226.3, 1198, and 2699, and the
“Records” Section of the Applicable Wage Order)

Labor Code section 226(a) states in pertinent part: “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in 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 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... and if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.”

Furthermore, Labor Code section 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.”

Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney’s fees.

Labor Code section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee’s wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

The Employer failed to provide Claimant with an accurate, timely itemized wage statement complying with the requirements of the Labor Code and applicable IWC Wage Order. Claimant and other aggrieved employees were only provided access to logs with minimal, insufficient information, as detailed above. Claimant 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 himself and other aggrieved employees of the Employer.

FAILURE TO PROVIDE PAID SICK LEAVE
(Labor Code §§ 246, 248.5)

Labor Code section 246 grants the right to employees to paid sick days. Specifically, Cal. Labor Code section 246(b) states that:

(1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.

(2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee's normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.

(3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.

Labor Code section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee's wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

The Employer violated Cal. Labor Code section 246 because it provided no paid sick leave to Claimant and other current and former aggrieved employees, nor did it provide them written notice of their paid sick leave available.

MISCLASSIFICATION AS INDEPENDENT CONTRACTORS

(Violation of Labor Code § 226.8)

Labor Code section 226.8 states in pertinent part:

(a) It is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an individual as an independent contractor.

(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

As set forth above, the Employer engaged in the willful misclassification of its employees as independent contractors. As a result, Claimant and other aggrieved employees have suffered a loss of wages, interest, and attorney's fees. The Employer is also subject to civil penalties pursuant to Labor Code section 226.8.

FAILURE TO REIMBURSE EXPENSES
(Labor Code §§ 2802 and 2804)

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."

"Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State." Cal. Labor Code § 2804.

The Employer failed to fulfill these obligations when it failed to reimburse Claimant and other aggrieved employees for all costs and expenses they incurred while working for the Employer, including but not limited to cell phone and internet costs.

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

(Labor Code §§ 201, 201.3, 202, 203, 204, 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.” Section 204(d) states: “The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” 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 201.3 states, in relevant part: “If an employee of a temporary services employer is assigned to work for a client, that employee’s wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week...If an employee of a temporary services employer is assigned to work for a client and is discharged by the temporary services employer or leasing employer, wages are due and payable as provided in Section 201...If an employee of a temporary services employer is assigned to work for a client and quits his or her employment with the temporary services employer, wages are due and payable as provided in Section 202... A temporary services employer who violates this section shall be subject to the civil penalties provided for in Section 203, and to any other penalties available at law.”

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 therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secludes or absents himself 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 210(a) provides: “(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 Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, 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, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

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

The Employer failed to timely pay Claimant and aggrieved employees all wages due and owing during and upon termination of employment. The Employer willfully failed to pay all wages and penalties when required by Sections 201, 201.3, 202, and 204 of the Labor Code. Therefore, the penalties to all affected employees, including Claimant.

CIVIL PENALTIES FOR VIOLATION OF
THE 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.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employer violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 510 and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, the Employer is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

As set forth above, ABA Protection Inc. was the Employer, and violated, or caused to be violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 226, 226.7, 1194, 2802, 510, 512, and 1197, and caused the employees to be paid less than the minimum

California Labor and Workforce Development Agency
ABA Protection, Inc.
Re: Attila Molnar
May 28, 2020
Page 12

set by the IWC Wage Order. As a result, the Employer is each liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

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, reimbursements, 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, ABA Protection Inc. is liable for these items in addition to the unpaid wages and reimbursements. Mr. Attila Molnar has already incurred in actual damages, costs and attorney's fees, and will continue to incur, costs as a result of ABA Protection's unlawful actions.

CONCLUSION

The Employer violated labor code sections as set forth herein. Claimant will pursue all remedies on behalf of himself and other aggrieved employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint for damages. Should you have any questions, please feel free to contact me at your convenience.

Sincerely,
COHELAN KHOUPT & SINGER



Kristina De La Rosa, Esq.

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