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4 Attorney for Plaintiffs
5 LINDA J. MERRILL and DRAKE INGEBRIGTSEN

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
12/7/2020 12:42 PM
Arlene D. Junior, Clerk of the Court
By: Alexandria Hankes, Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SONOMA**
10

11 LINDA J. MERRILL, individually, and on behalf)
of herself and other current or former employees,)
12 and DRAKE INGEBRIGTSEN, individually and)
on behalf of himself and other current or former)
13 employees,)

14 Plaintiffs,)

15 vs.)

16 GARRY MAURO, an individual; CHRISTIAN)
ARCHER, an individual; ALICIA O'NEILL, an)
17 individual; SPENCER ZACK, an individual;)
HAROLD DELOUISE, an individual; MAURO,)
18 ARCHER, AND ASSOCIATES, PLLC, a District)
of Columbia professional limited liability)
19 company; MAURO ARCHER O'NEILL LLP, a)
District of Columbia limited liability partnership;)
20 MAURO, O'NEILL & ARCHER, LLC a District)
of Colombia limited liability company; MAURO,)
21 ARCHER AND ASSOCIATES, LLC, a District)
of Columbia limited liability company; MAURO,)
22 ARCHER & ASSOCIATES LLP, a District of)
Columbia limited liability partnership; O'NEILL)
23 LAW, LLP, a District of Columbia limited)
liability partnership; MIKAL C. WATTS, an)
24 individual; FRANCISCO GUERRA, IV, an)
individual; WATTS GUERRA LLP, a Texas)
25 limited liability partnership; and DOES 1 through)
20, inclusive,)

26
27 Defendants.
28

Case No.: SCV-267502

COMPLAINT FOR:

- 1) **FAILURE TO PAY OVERTIME COMPENSATION;**
- 2) **FAILURE TO PROVIDE REST PERIODS;**
- 3) **FAILURE TO PROVIDE MEAL PERIODS;**
- 4) **WILLFUL FAILURE TO PAY WAGES TO A DISCHARGED OR QUITTING EMPLOYEE; AND**
- 5) **WILLFUL MISCLASSIFICATION**

1 Plaintiffs allege as follows:

2 1. Defendant GARRY MAURO is, and at all times mentioned herein was, an individual
3 residing in Texas, and an owner of Defendants MAURO, ARCHER, AND ASSOCIATES, PLCC;
4 MAURO ARCHER O'NEILL LLP; MAURO, O'NEILL & ARCHER, LLC; MAURO, ARCHER
5 AND ASSOCIATES, LLC; and MAURO, ARCHER & ASSOCIATES LLP. Defendant GARRY
6 MAURO suffered or permitted Plaintiffs to work, and engaged in a pattern or practice of willfully
7 misclassifying Plaintiffs and their coworkers as independent contractors.

8 2. Defendant CHRISTIAN ARCHER is, and at all times mentioned herein was, an individual
9 residing in Texas, and an owner of Defendants MAURO, ARCHER, AND ASSOCIATES, PLCC;
10 MAURO ARCHER O'NEILL LLP; MAURO, O'NEILL & ARCHER, LLC; MAURO, ARCHER
11 AND ASSOCIATES, LLC; and MAURO, ARCHER & ASSOCIATES LLP. Defendant
12 CHRISTIAN ARCHER suffered or permitted Plaintiffs to work, and engaged in a pattern or
13 practice of willfully misclassifying Plaintiffs and their coworkers as independent contractors.

14 3. Defendant ALICIA O'NEILL is, and at all times mentioned herein was, an individual
15 residing in Texas and an owner of Defendants MAURO, ARCHER, AND ASSOCIATES, PLCC;
16 MAURO ARCHER O'NEILL LLP; MAURO, O'NEILL & ARCHER, LLC; MAURO, ARCHER
17 AND ASSOCIATES, LLC; MAURO, ARCHER & ASSOCIATES LLP; and O'NEILL LAW,
18 LLP. Defendant ALICIA O'NEILL is also an owner and managing agent of Defendant WATTS
19 GUERRA LLP. Defendant ALICIA O'NEILL exercised control over the wages, hours, and
20 working conditions of Plaintiffs, suffered or permitted Plaintiffs to work, and engaged Plaintiffs,
21 thus creating an employment relationship. Defendant ALICIA O'NEILL set Plaintiff LINDA J.
22 MERRILL's pay, and told her when to show up for the first day of work. Defendant ALICIA
23 O'NEILL also engaged in a pattern or practice of willfully misclassifying Plaintiffs and their
24 coworkers as independent contractors.

25 4. Defendant SPENCER ZACK is, and at all times mentioned herein was, an individual
26 residing in Texas and the Chief Operating Officer of Defendants MAURO, ARCHER, AND
27 ASSOCIATES, PLCC; MAURO ARCHER O'NEILL LLP; MAURO, O'NEILL & ARCHER,
28 LLC; MAURO, ARCHER AND ASSOCIATES, LLC; MAURO, ARCHER & ASSOCIATES

1 LLP; and O'NEILL LAW, LLP. Defendant SPENCER ZACK exercised control over the hours and
2 working conditions of Plaintiffs, and instructed Plaintiff LINDA J. MERRILL on what tasks to
3 perform and how to perform them. Defendant SPENCER ZACK also engaged in a pattern or
4 practice of willfully misclassifying Plaintiffs and their coworkers as independent contractors.

5 5. Defendant HAROLD DELOUISE is, and at all times mentioned herein was, an individual
6 residing in Louisiana and was one of Plaintiff DRAKE INGEBRIGTSEN's supervisors. Defendant
7 HAROLD DELOUISE exercised control over the wages, hours, and working conditions of
8 Plaintiffs, suffered or permitted Plaintiffs to work, and engaged Plaintiffs, thus creating an
9 employment relationship. Defendant HAROLD DELOUISE hired Plaintiff DRAKE
10 INGEBRIGTSEN, set his pay, dictated his work schedule, and instructed Plaintiff DRAKE
11 INGEBRIGTSEN on what tasks to perform and how to perform them.

12 6. Defendant MAURO, ARCHER, AND ASSOCIATES, PLLC is, and at all times mentioned
13 herein was, a District of Columbia professional limited liability company doing business in
14 California.

15 7. Defendant MAURO ARCHER O'NEILL LLP is a District of Columbia limited liability
16 partnership doing business in California.

17 8. Defendant MAURO, O'NEILL & ARCHER, LLC is, and at all times mentioned herein was,
18 a District of Columbia limited liability company doing business in California.

19 9. Defendant MAURO, ARCHER AND ASSOCIATES, LLC is, and at all times mentioned
20 herein was, a District of Columbia limited liability company doing business in California.

21 10. Defendant MAURO, ARCHER & ASSOCIATES LLP is a District of Columbia limited
22 liability company doing business in California.

23 11. Defendant O'NEILL LAW, LLP is, and at all times mentioned herein was, a District of
24 Columbia limited liability partnership doing business in California.

25 12. Defendant MIKAL C. WATTS is, and at all times mentioned herein was, an individual
26 residing in Texas and an owner of Defendant WATTS GUERRA LLP. Defendant MIKAL C.
27 WATTS exercised control over the wages, hours, or working conditions of Plaintiffs and suffered or
28

1 permitted Plaintiffs to work. Defendant MIKAL C. WATTS also engaged in a pattern or practice of
2 willfully misclassifying Plaintiffs and their coworkers as independent contractors.

3 13. Defendant FRANCISCO GUERRA, IV is, and at all times mentioned herein was, an
4 individual residing in Texas, and an owner of Defendant WATTS GUERRA LLP. Defendant
5 FRANCISCO GUERRA, IV suffered or permitted Plaintiffs to work. Defendant FRANCISCO
6 GUERRA, IV also engaged in a pattern or practice of willfully misclassifying Plaintiffs and their
7 coworkers as independent contractors.

8 14. Defendant WATTS GUERRA LLP is, and at all times mentioned herein was, a Texas
9 limited liability partnership doing business in California.

10 15. Plaintiffs are ignorant of the true names and capacities of those Defendants named as DOES
11 1 through 20 (hereafter "DOE Defendants"), and for that reason have sued those Defendants by
12 fictitious names. Plaintiffs are informed and believe, and on that basis allege, that each of the
13 fictitiously named Defendants is in some way liable and legally responsible for the damages and
14 injuries set forth in this complaint. Plaintiffs will seek leave of the Court to amend this Complaint
15 to identify these Defendants when their identities are ascertained.

16 I. JURISDICTION AND VENUE

17 16. This Court has jurisdiction over all causes of action asserted in this Complaint pursuant to
18 the California Constitution, Article VI, section 10, because this case comprises causes of action not
19 assigned by statute to other trial courts.

20 17. This Court has jurisdiction over each Defendant named in this complaint because each
21 Defendant is a person or entity who is either domiciled in California or has sufficient minimum
22 contacts with California so as to render the exercise of jurisdiction by the California Courts
23 (including this court) reasonable and just, according to our nation's traditional conception of fair
24 play and substantial justice.

25 18. Venue is proper in this Court in accordance with California Code of Civil Procedure section
26 393 because the causes of action arose in this County.

27 II. FACTS COMMON TO ALL CLAIMS

1 19. On or about November 26, 2018, Plaintiff LINDA J. MERRILL began working at
2 Defendants' law firms as an administrative assistant. She answered the telephone, and did filing
3 and data entry for Defendants.

4 20. On or about December 3, 2018, Plaintiff DRAKE INGEBRINGTSEN began working at
5 Defendants' law firms as a Content Specialist. He performed data intake, met with Defendants'
6 clients, obtained witness statements from Defendants' clients, organized the clients' data, and
7 researched the value of the clients' damages for Defendants.

8 21. Along with dozens of other employees of Defendants, in spite of the fact that they were
9 employees of Defendants, Plaintiffs were willfully misclassified by Defendants as independent
10 contractors, and sent 1099 forms for their compensation instead of W-2 forms.

11 22. Plaintiff LINDA J. MERRILL was paid a fixed salary of \$4,000.00 per month, and worked
12 over fifty hours a week.

13 23. Plaintiff DRAKE INGEBRIGTSEN was paid a fixed salary of \$4,000.00 per month, and
14 worked approximately 45 hours a week.

15 24. Plaintiff LINDA J. MERRILL was a nonexempt employee of Defendants: she was paid less
16 than twice the minimum wage, and her duties as an administrative assistant do not fall under any
17 exempt category.

18 25. Plaintiff DRAKE INGEBRIGTSEN was also a nonexempt employee of Defendants: he was
19 paid less than twice the minimum wage, and his duties as a Content Specialist do not fall under any
20 exempt category.

21 26. In spite of being nonexempt employees, Plaintiffs were not paid for all their hours worked
22 nor were they paid overtime.

23 27. During her employment with Defendants, Plaintiff LINDA J. MERRILL was not provided
24 meal periods or rest periods- she had to work through her lunches answering the telephone and was
25 not able to take two ten-minute breaks per day.

26 28. In or about April 2019, Plaintiff LINDA J. MERRILL requested time off to move into her
27 new home, as her previous home had burned down.

28

1 29. Defendant SPENCER ZACK authorized Plaintiff LINDA J. MERRILL to take off time to
2 move into her new home.

3 30. In spite of the fact that she was given permission to take time off to move into her new
4 home, on or about May 26, 2019, Plaintiff LINDA J. MERRILL was fired by Defendants.
5 Defendant SPENCER ZACK told Plaintiff LINDA J. MERRILL during a May 26, 2019 phone call
6 that Defendants needed to let Plaintiff LINDA J. MERRILL go because they needed to hire more
7 people at a lower rate of pay. Plaintiff LINDA J. MERRILL was given a check for her last week of
8 employment on May 27, 2019. This check did not include the unpaid overtime Plaintiff LINDA J.
9 MERRILL was owed.

10 31. On or May 11, 2019, Plaintiff DRAKE INGEBRIGTSEN gave Defendants notice that he
11 was resigning his employment. Plaintiff DRAKE INGEBRIGTSEN's last day of employment with
12 Defendants was on or about May 13, 2019.

13 32. Plaintiff DRAKE INGEBRIGTSEN was given his last paycheck on or about May 15, 2019.
14 This check did not include the unpaid overtime Plaintiff was owed.

15 33. On May 21, 2020, Plaintiff LINDA J. MERRILL gave written notice by online filing with
16 the Labor and Workforce Development Agency and by certified mail to Defendants of the specific
17 provisions of the California Labor Code alleged to have been violated, including the facts and
18 theories to support the alleged violation. (The "Notice.") A copy of this Notice is attached hereto
19 as Exhibit A and incorporated herein by reference.

20 34. The Notice filed with the Labor and Workforce Development Agency was accompanied by
21 a filing fee of \$75.

22 35. Defendants did not cure the alleged violation within 33 days of the postmark date of the
23 Notice. Defendants did not give written notice to Plaintiff within 33 days of the postmark date of
24 Plaintiff's Notice that the alleged violation had allegedly been cured.

25 36. On November 3, 2020, Plaintiffs LINDA J. MERILL and DRAKE INGEBRIGTSEN gave
26 written notice by online filing with the Labor and Workforce Development Agency and by certified
27 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
28 violated, including the facts and theories to support the alleged violations. ("The Amended

1 Notice.”) A copy of this Amended Notice is attached hereto as Exhibit B and incorporated herein
2 by reference.

3 37. Defendants did not cure the alleged violation of California Labor Code section 226.8 within
4 33 calendar days of the postmark date of the Amended Notice. Defendants did not file a notice with
5 the Labor and Workforce Development Agency within 33 days of the postmark date of Plaintiff's
6 Amended Notice that the alleged violation of California Labor Code section 226.8 had allegedly
7 been cured. Defendants did not give written notice by certified mail within 33 days of the postmark
8 date of Plaintiff's Amended Notice to Plaintiffs that the alleged violation of California Labor Code
9 section 226.8 had allegedly been cured, including a description of actions taken.

10
11 **FIRST CAUSE OF ACTION**

12 (Plaintiffs LINDA J. MERRILL and DRAKE INGEBRIGTSEN as individuals only against all
13 Defendants)

14 **FAILURE TO PAY OVERTIME COMPENSATION**

15 **[California Labor Code §§ 1194, 510, 515; 29 USCS §§ 207, 216]**

16 38. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth herein.

17 39. Plaintiffs performed work for Defendants.

18 40. Plaintiffs worked overtime hours.

19 41. Defendants knew or should have known that Plaintiffs had worked overtime hours.

20 42. Plaintiffs were not paid the overtime rate for the overtime hours worked.

21 43. Plaintiff LINDA J. MERRILL is owed at least \$8,204.94 in unpaid overtime pay earned
22 from approximately November 26, 2018 to May 11, 2019.

23 44. Plaintiff DRAKE INGEBRIGTSEN is owed at least \$5,037.21 in unpaid overtime pay
24 earned from approximately December 3, 2018 to May 13, 2019.

25 **SECOND CAUSE OF ACTION**

26 (Plaintiff LINDA J. MERRILL as an individual only against all Defendants)

27 **FAILURE TO PROVIDE REST PERIODS**

28 **[California Labor Code § 226.7]**

1 45. Plaintiff LINDA J. MERRILL re-alleges each paragraph of this Complaint as though fully
2 set forth herein.

3 46. Defendants failed to provide Plaintiff LINDA J. MERRILL rest periods.

4 47. Pursuant to California Labor Code § 226.7, Plaintiff LINDA J. MERRILL is owed
5 approximately \$2,746.52 in rest period penalties accrued from approximately November 26, 2018 to
6 May 11, 2019.

7 **THIRD CAUSE OF ACTION**

8 (Plaintiff LINDA J. MERRILL as an individual only against all Defendants)

9 **FAILURE TO PROVIDE MEAL PERIODS**

10 **[California Labor Code § 226.7]**

11 48. Plaintiff LINDA J. MERRILL re-alleges each paragraph of this Complaint as though fully
12 set forth herein.

13 49. Defendants failed to provide Plaintiff LINDA J. MERRILL meal periods.

14 50. Pursuant to California Labor Code § 226.7 Plaintiff LINDA J. MERRILL is owed
15 approximately \$2,746.52 in meal period penalties accrued from approximately November 26, 2018
16 to May 11, 2019.

17 **FOURTH CAUSE OF ACTION**

18 (Plaintiffs LINDA J. MERRILL and DRAKE INGEBRIGTSEN as individuals only against all
19 Defendants)

20 **WILLFUL FAILURE TO PAY WAGES TO A DISCHARGED OR QUITTING**
21 **EMPLOYEE**

22 **[California Labor Code § 203]**

23 51. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth herein.

24 52. Plaintiff DRAKE INGEBRIGTSEN's last day of employment was May 13, 2019.

25 53. Plaintiff LINDA J. MERRILL's employment was terminated on May 26, 2019.

26 54. To date, Defendants have failed to pay all overtime wages due.

27 55. Defendants have willfully failed to pay all overtime wages due.
28

1 56. At the time of her termination, Plaintiff LINDA J. MERRILL's daily wage rate including
2 overtime owed was \$255.29 per day.

3 57. At the time of his termination, Plaintiff DRAKE INGEBRIGTSEN's daily wage rate
4 including overtime owed was \$219.26 per day.

5 58. Plaintiff LINDA J. MERRILL is owed approximately \$7,658.70 in waiting time penalties.

6 59. Plaintiff DRAKE INGEBRIGTSEN is owed approximately \$6,577.80 in waiting time
7 penalties.

8 **FIFTH CAUSE OF ACTION**

9 (Plaintiffs LINDA J. MERRILL and DRAKE INGEBRIGTSEN and other current or former
10 employees against all Defendants)

11 **WILLFUL MISCLASSIFICATION**

12 **[California Labor Code §§ 226.8, 2699]**

13 60. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth herein.

14 61. Plaintiffs and their coworkers were employees of Defendants.

15 62. Defendants engaged in a pattern or practice of willfully misclassifying Plaintiffs and their
16 coworkers as independent contractors.

17 63. At least 32 current or former employees of Defendants were willfully misclassified by
18 Defendants since May 13, 2019.

19 64. Defendants are thus subject to a civil penalty of \$25,000.00 for each violation of California
20 Labor Code § 226.8.

PRAYER FOR RELIEF

Wherefore, Plaintiff LINDA J. MERRILL as an individual prays for the following relief against all Defendants:

As to the first cause of action:

1. At least \$8,204.94 in unpaid overtime pay earned from approximately November 26, 2018 to May 11, 2019.
2. Attorney's fees and costs, as provided for by California Labor Code section 1194 and 29 USCS § 216(b);
3. Interest at the rate of ten percent per annum pursuant to California Labor Code sections 218.6 and 1194;
4. Liquidated damages of at least \$8,204.94 as provided for by 29 USCS § 216(b); and
5. Such other and further relief as the Court deems just and proper.

As to the second cause of action:

6. At least \$2,746.52 in rest period penalties as provided for by California Labor Code section 226.7, accrued from approximately November 26, 2018 to May 11, 2019.
7. Interest at the rate of ten percent per annum pursuant to California Civil Code section 3288;
8. Costs of suit; and
9. Such other and further relief as the Court deems just and proper.

As to the third cause of action:

10. At least \$2,746.52 in meal period penalties as provided for by California Labor Code section 226.7, accrued from approximately November 26, 2018 to May 11, 2019.
11. Interest at the rate of ten percent per annum pursuant to California Civil Code section 3288;
12. Costs of suit; and
13. Such other and further relief as the Court deems just and proper.

As to the fourth cause of action:

14. At least \$7,658.70 in waiting time penalties under California Labor Code section 203;
15. Costs of suit;

1 16. Interest at the rate of ten percent per annum pursuant to California Civil Code section 3288;
2 and

3 17. Such other and further relief as the Court deems just and proper.
4

5 Wherefore, Plaintiff DRAKE INGEBRIGTSEN as an individual prays for the following relief
6 against all Defendants:

7 **As to the first cause of action:**

- 8 1. At least \$5,037.21 in unpaid overtime pay earned from approximately December 3, 2018 to
9 May 13, 2019.
- 10 2. Attorney's fees and costs, as provided for by California Labor Code section 1194 and 29
11 USCS § 216(b);
- 12 3. Interest at the rate of ten percent per annum pursuant to California Labor Code sections
13 218.6 and 1194;
- 14 4. Liquidated damages of at least \$5,037.21 as provided for by 29 USCS § 216(b); and
- 15 5. Such other and further relief as the Court deems just and proper.

16 **As to the fourth cause of action:**

- 17 6. At least \$6,577.80 in waiting time penalties under California Labor Code section 203;
- 18 7. Costs of suit;
- 19 8. Interest at the rate of ten percent per annum pursuant to California Civil Code section 3288;
20 and
- 21 9. Such other and further relief as the Court deems just and proper.
22
23

24 Wherefore, Plaintiffs LINDA J. MERRILL and DRAKE INGEBRIGTSEN pray for relief on
25 behalf of themselves and other current and former employees of Defendants:

26 **As to the fifth cause of action:**

- 27 1. At least \$800,000 in civil penalties for violations of California Labor Code section
28 226.8(a)(1), as provided for in California Labor Code section 226.8(c), to be distributed 75

- 1 percent to the California Labor and Workforce Development Agency and 25 percent to each
2 aggrieved employee, as required by California Labor Code 2699(i);
- 3 2. As required by California Labor Code section 226.8(e) and (f), a court order that Defendants
4 display prominently on their Internet Web sites, for one year, in an area which is accessible
5 to all employees and the general public a notice signed by an officer of Defendants that sets
6 forth all of the following:
- 7 a. That the Court has found that the Defendant has committed a serious violation of the
8 law by engaging in the willful misclassification of employees.
- 9 b. That the Defendant has changed its business practices in order to avoid committing
10 further violations of this section.
- 11 c. That any employee who believes that he or she is being misclassified as an
12 independent contractor may contact the Labor and Workforce Development Agency.
13 The notice shall include the mailing address, email address, and telephone number of
14 the agency.
- 15 d. That this notice is being posted pursuant to a state order.
- 16 3. Attorney's fees and costs, as provided for by California Labor Code section 2699(g)(1); and
17 4. Such other and further relief as the Court deems just and proper.
- 18
19

20 DATED: December 7, 2020

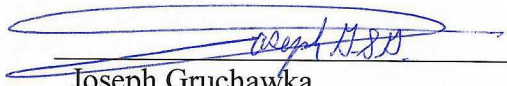
21 
22 Joseph Gruchawka
23 Attorney for Plaintiffs LINDA J.
24 MERRILL and DRAKE
25 INGEBRIGTSEN
26
27
28

Exhibit A

The Law Office of Joseph Gruchawka

May 21, 2020

VIA CERTIFIED MAIL:

Garry Mauro
818 Connecticut Avenue Northwest
#1100
Washington, DC 20006

Christian Archer
818 Connecticut Avenue Northwest
#1100
Washington, DC 20006

Alicia O'Neill
818 Connecticut Avenue Northwest
#1100
Washington, DC 20006

Spencer Zack
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Austin, TX 78703

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O'Neill Law, LLP

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Watts Guerra, LLP
4 Dominion Dr.
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San Antonio, TX 78257-1391

PAGA Notice

[Cal Lab Code § 2699.3(c)(1)(A)]

To Whom It May Concern:

Plaintiff Linda J. Merrill (“Merrill”) alleges that Defendants Garry Mauro; Christian Archer; Alicia O’Neill; Spencer Zack; Mauro, Archer, and Associates, PLLC; Mauro Archer O’Neill LLP; Mauro, O’Neill & Archer, LLC; Mauro, Archer, & Associates LLP; O’Neill Law, LLP; Mikal C. Watts; Francisco Guerra, IV; and Watts Guerra, LLP (“Defendants”) violated California Labor Code section 226.8(a)(1) by willfully misclassifying Merrill and her coworkers¹ as an independent contractors.

In late November 2018, Merrill began working at Defendants’ law firms as an administrative assistant. She answered the telephone, and did filing and data entry for Defendants. She was terminated by Defendants on May 26, 2019, and was given a check for her last week of employment on May 27, 2019.

¹ These coworkers who were willfully misclassified by Defendants as independent contractors include, but are not limited to: Jerrica Perez, Kara Halvorsen, Devon Claiche, Shirleen Claiche, Drake Ingbrighten, Yvonne Morones, Crystal Ruiz, Nick Swain, John Myhre, Amanda Rae McCarthy, Dennis Rosatti, Pam Flores, Juan Roman, Cierra Cassero, Constance Brown, and Melissa Chavez.

Along with dozens of other employees of Defendants, in spite of the fact that she was an employee of Defendants, Merrill was willfully misclassified by Defendants as an independent contractor, and sent a 1099 form for her compensation instead of W-2 forms.

In April 2018, the California Supreme Court in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal. 5th 903 adopted the “ABC” test to determine whether a worker is an employee or an independent contractor.

Under the ABC test, for a worker to be properly classified as an independent contractor rather than an employee, the hiring party (in this case Defendants), has the burden of establishing that all of the following three conditions are satisfied:

- (A) The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- (B) The worker performs work that is outside the usual course of the hiring entity’s business; and
- (C) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

The relationship between Defendants and Merrill (and her coworkers) did not meet any element of the ABC test:

A. Merrill and her coworkers were subject to the control and direction of Defendants

Merrill and her coworkers reported to Defendants, and were subject to their control and direction, as Defendants instructed them on what tasks to perform and how to perform them. For example, Defendants instructed Merrill on how to process the mail and gave her spreadsheets to fill out.

Defendants trained Merrill and her coworkers, assigned tasks to Merrill and her coworkers, set their schedules, instructed them on when to take breaks, and required them to work in the office instead of from home.

B. Merrill and her coworkers performed work within Defendants’ usual course of business

Defendants’ usual course of business is that of a law firm. As an administrative assistant at Defendants’ law firms, Merrill performed work within the usual course of Defendants’ business, such as answering the telephone for Defendants’ law firms, performing filing for Defendants’ law firms, and performing data entry for Defendants’ law firms.

Merrill's coworkers performed intake for Defendants' law firms, met with Defendants' clients, explained the lawsuit to them, obtained signed legal services agreements, collected documentation, including insurance policies and photos from Defendants' clients, and scanned and submitted paperwork to Defendants.

C. Neither Merrill nor her coworkers were engaged in an independently established business

During the time period of their employment with Defendants, neither Merrill nor her coworkers were engaged in independently established businesses. During the time period she worked for Defendants, Merrill was only working for Defendants, and did not have any clients that she provided administrative assistant services to as an independent contractor.

Please be advised that pursuant to California Labor Code section 2699.3(c)(2)(A), you have 33 calendar days from the postmark date of this notice to cure your violations of California Labor Code sections 226.8(a)(1), provide written notice by certified mail to me that you have done so, and provide online notice to the Labor and Workforce Development Agency, including a description of the actions taken.

Should you fail to do so, Merrill reserves her right to seek a \$25,000.00 penalty pursuant to California Labor Code section 226.8(c) for each violation of California Labor Code section 226.8(a)(1), seek an order that Defendants display prominently on their Internet Web sites a notice that Defendants engaged in the willful misclassification of employees, and recover attorney's fees and costs as provided for by California Labor Code section 2699(g).

Thank you for your prompt attention to this matter.

Respectfully,



Joseph Gruchawka

Exhibit B

The Law Office of Joseph Gruchawka

November 3, 2020

VIA CERTIFIED MAIL:

Garry Mauro
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San Antonio, TX 78257-1391

Amended PAGA Notice
[Cal Lab Code § 2699.3(a)(1)(A) and (c)(1)(A)]

To Whom It May Concern:

Plaintiffs Linda J. Merrill (“Merrill”) and Drake Ingebrigtsen (“Ingebrigtsen”) allege that Defendants Garry Mauro; Christian Archer; Alicia O’Neill; Spencer Zack; Harold DeLouise, Amanda McCarthy, Mauro, Archer, and Associates, PLLC; Mauro Archer O’Neill LLP; Mauro, O’Neill & Archer, LLC; Mauro, Archer and Associates, LLC; Mauro, Archer, & Associates LLP; O’Neill Law, LLP; Mikal C. Watts; Francisco Guerra, IV; and Watts Guerra, LLP (“Defendants”) committed the following violations of the California Labor Code:

- 1) Section 226.7 by failing to provide Merrill, her coworkers,¹ and subsequent employees with rest periods;
- 2) Section 226.7 by failing to provide Merrill, her coworkers, and subsequent employees with meal periods;
- 3) Section 226.8(a)(1) by willfully misclassifying Plaintiffs, their coworkers, and subsequent employees as independent contractors;
- 4) Section 510 by failing to pay Plaintiffs, their coworkers, and subsequent employees overtime;
- 5) Section 204 by failing to timely pay Plaintiffs, their coworkers, and subsequent employees all wages due; and
- 6) Section 226 by failing to provide Plaintiffs, their coworkers, and subsequent employees accurate itemized wage statements.

In late November 2018, Merrill began working at Defendants’ law firms as an administrative assistant. She answered the telephone, and did filing and data entry for Defendants. She was terminated by Defendants on May 26, 2019, and was given a check for her last week of employment on May 27, 2019.

In December 2018, Ingebrigtsen began working at Defendants’ law firms as a content specialist. He performed data intake, met with Defendants’ clients, obtained witness statements from Defendants’ clients, organized the clients’ data, and researched the value of the clients’ damages for Defendants. His last day of employment with Defendants was May 13, 2019.

Along with dozens of other employees of Defendants, in spite of the fact that they were employees of Defendants, Plaintiffs were willfully misclassified by Defendants as independent contractors, and sent 1099 forms for their compensation instead of W-2 forms.

¹ These coworkers include, but are not limited to: Jerrica Perez, Kara Halvorsen, Devon Claiche, Shirleen Claiche, Yvonne Morones, Crystal Ruiz, Nick Swain, John Myhre, Dennis Rosatti, Pam Flores, Juan Roman, Cierra Cassero, Constance Brown, and Melissa Chavez.

In April 2018, the California Supreme Court in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal. 5th 903 adopted the “ABC” test to determine whether a worker is an employee or an independent contractor.

Under the ABC test, for a worker to be properly classified as an independent contractor rather than an employee, the hiring party (in this case Defendants), has the burden of establishing that all of the following three conditions are satisfied:

- (A) The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- (B) The worker performs work that is outside the usual course of the hiring entity’s business; and
- (C) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

The relationship between Defendants and Plaintiffs (and their coworkers and subsequent employees) did not meet any element of the ABC test:

A. Plaintiffs, their coworkers, and subsequent employees were subject to the control and direction of Defendants

Plaintiffs, their coworkers, and subsequent employees reported to Defendants, and were subject to their control and direction, as Defendants instructed them on what tasks to perform and how to perform them. For example, Defendants instructed Merrill on how to process the mail and gave her spreadsheets to fill out, and Defendants instructed Ingebrigtsen which office to work in and which clients’ files to work on.

Defendants trained Merrill and her coworkers, assigned tasks to Merrill and her coworkers, set their schedules, instructed them on when to take breaks, and required them to work in the office instead of from home.

Defendants trained Ingebrigtsen and his coworkers, assigned tasks to Ingebrigtsen and his coworkers, and often required them to work in the office instead of from home.

B. Plaintiffs, their coworkers, and subsequent employees performed work within Defendants’ usual course of business

Defendants’ usual course of business is that of a law firm. As an administrative assistant at Defendants’ law firms, Merrill performed work within the usual course of Defendants’ business, such as answering the telephone for Defendants’ law firms, performing filing for Defendants’ law firms, and performing data entry for Defendants’ law firms. As a Content Specialist at Defendants’ law firms, Ingebrigtsen performed work within the usual course of

Defendants' business, such as meeting with Defendants' clients, obtaining witness statements from Defendants' clients, and researching the value of Defendants' clients' damages for Defendants.

Plaintiffs' coworkers and subsequent employees performed intake for Defendants' law firms, met with Defendants' clients, explained the lawsuit to them, obtained signed legal services agreements, collected documentation, including insurance policies and photos from Defendants' clients, and scanned and submitted paperwork to Defendants.

C. Neither Plaintiffs nor their coworkers nor subsequent employees were engaged in independently established businesses

During the time period of their employment with Defendants, neither Plaintiffs nor their coworkers nor subsequent employees were engaged in independently established businesses. During the time period she worked for Defendants, Merrill was only working for Defendants, and did not have any clients that she provided administrative assistant services to as an independent contractor. During the time period he worked for Defendants, Ingebrigtsen was only working for Defendants, and did not have any clients that he provided content specialist services to as an independent contractor.

Because they were employees and not independent contractors, Plaintiffs, their coworkers, and subsequent employees were entitled to the rights afforded employees under the California Labor Code. Plaintiff, their coworkers, and subsequent employees were nonexempt employees entitled to be paid for all overtime hours worked and to receive meal periods and rest periods, because their job duties did not fall under any exempt category, and they were paid less than twice the minimum wage. Unfortunately, Defendants violated the California Labor Code as follows:

- 1) Merrill and many of her coworkers and subsequent employees were not provided rest periods in violation of California Labor Code section 226.7- she and many of her coworkers and subsequent employees were not able to take two ten-minute breaks per day.
- 2) Merrill and many of her coworkers and subsequent employees were not provided meal periods in violation of California Labor Code section 226.7- she and many of her coworkers and subsequent employees had to work through their lunches answering the telephones.
- 3) As discussed above, Plaintiffs, their coworkers, and subsequent employees were willfully misclassified by Defendants, in violation of California Labor Code 226.8.
- 4) Merrill worked over fifty hours per week for Defendants, but was only ever paid a fixed salary of \$4,000 per month. Ingebrigtsen worked approximately forty-five hours per week for Defendants, but was only ever paid a fixed salary of \$4,000 per month. Many of Plaintiffs' coworkers and subsequent employees also worked more than forty hours per week. Defendants violated California Labor Code section 510 by only paying Plaintiffs,

their coworkers, and subsequent employees fixed monthly salaries, and failing to pay them for overtime hours worked.

- 5) In violation of California Labor Code section 204, Plaintiffs, their coworkers, and subsequent employees were not timely paid all wages due twice each calendar month. Their paychecks did not include the overtime pay they were owed, and often they were only paid once per month.
- 6) In violation of California Labor Code section 226, Defendants failed to provide Plaintiffs, their coworkers, and subsequent employees any itemized wage statements at all. Plaintiffs, their coworkers, and subsequent employees were often only provided with a handwritten check with the check date, the gross amount, the payor, the payee, and a memo line reading, "payroll."

Respectfully,

A handwritten signature in blue ink, appearing to read "Joseph Gruchawka", is enclosed within a large, horizontal, oval-shaped scribble.

Joseph Gruchawka