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6
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JOHN COLBURN

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

11
12 JOHN COLBURN on behalf of himself, and all)
others similarly situated, and all aggrieved)
13 employees,)

14)
15)
16 Plaintiff,

17 v.

18 ASURION INSURANCE SERVICES, INC.;)
and DOES 1 through 50, inclusive,)

19)
20 Defendants.)
21)
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23)
24)
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26)
27)
28)

**ENDORSED
FILED
ALAMEDA COUNTY**
AUG 18 2020
CLERK OF THE SUPERIOR COURT
By _____ Deputy

RG20071743

Case No:

CLASS & REPRESENTATIVE ACTION

CLASS & REPRESENTATIVE ACTION
COMPLAINT FOR:

- 1. UNFAIR BUSINESS PRACTICES;
- 2. VIOLATIONS OF THE LABOR CODE;
- 3. PENALTIES; and
- 4. ATTORNEYS' FEES.

DEMAND FOR JURY TRIAL

COMPLAINT

CASE NO.

Filed by fcy

1 Plaintiff JOHN COLBURN, on behalf of himself and all others similarly situated, and all
2 aggrieved employees, complains against Defendants ASURION INSURANCE SERVICES,
3 INC., and Does 1 through 50 (all referred to collectively as “Defendants” or “ASURION”) as
4 follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has subject matter jurisdiction over Plaintiff’s claims, based on, among
7 other statutes, California Business & Professions Code §§ 17200, *et seq.*, and California Labor
8 Code §§ 201-203, 204, 226(a), 226.3, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and
9 2802. In particular, Plaintiff has complied with all California Labor Code § 2699.3 requirements
10 for commencing a civil action under the California Private Attorneys General Act of 2004,
11 California Labor Code §§ 2698, *et seq.* (“PAGA”).

12 2. This Court has personal jurisdiction over the parties because at all times relevant
13 hereto Plaintiff was a California resident who worked in California for Defendants and
14 Defendants have systematically and continuously conducted business in the State of California.

15 3. Venue is proper in this Court because California Code of Civil Procedure §§ 395
16 and 395.5, and case law interpreting those sections, provide that if a foreign business entity fails
17 to designate with the office of the California Secretary of State a principal place of business in
18 California, it is subject to being sued in any county in the state that plaintiff desires. On
19 information and belief, as of the date this Complaint is filed, Defendant Asurion Insurance
20 Services, Inc., is a foreign business entity and has failed to designate a principal place of business
21 in California with the office of the Secretary of State.

22 **II. PARTIES AND BACKGROUND**

23 4. Plaintiff JOHN COLBURN is an adult who worked for Defendants as a customer
24 solutions technician from approximately August 3, 2019 to November 15, 2019.

25 5. Defendant ASURION INSURANCE SERVICES, INC. is a Tennessee
26 Corporation doing business throughout California and is a “person” as defined by California
27 Labor Code § 18 and California Business and Professions Code § 17201. In addition, it is an
28 “employer” as that term is used in the California Labor Code and in the California Industrial

Welfare Commission's Orders regulating wages, hours, and working conditions.

6. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1 through 50, inclusive, and therefore sue those Defendants by those fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and on that ground alleges that each of the fictitiously named Defendants is responsible in some manner for the occurrences alleged and that Plaintiff's damages and other losses as alleged are proximately caused by those occurrences.

7. Plaintiff brings this action on behalf of a proposed state-wide class of non-exempt customer solutions technicians who worked for ASURION in California to challenge Defendants' (a) policy and practice of failing to pay any wages whatsoever, including the minimum wage, to customer solutions technicians, for all hours worked, including for return travel time after the final appointment of the shift; (b) policy and practice of violating California Labor Code § 510 and IWC Wage Order 4-2001 by failing to pay overtime wages to employees who worked more than eight hours in a day or 40 hours in a week; (c) policy and practice of violating California Labor Code § 226 by failing to provide customer solutions technicians complete and accurate itemized wage statements; (d) and policy and practice of violating California Labor Code §§ 201-203 by failing to pay former customer solutions technicians all wages due and owing at the time of discharge or voluntary quit; and (e) policy and practice of failing to reimburse customer solutions technicians for all necessary expenditures and losses incurred at the direction of Defendants.

8. Plaintiff brings this action on behalf of himself and a proposed class of all customer solutions technicians that performed work on behalf of ASURION within the State of California at any time during the four-year period preceding the filing of this Complaint up to the present and until compliance with the law. Plaintiff seeks recovery of all allowable compensation and other sums for the violations described above, including unpaid minimum and overtime wages, reimbursement of business expenses, restitution and restoration of sums owed and property unlawfully withheld, statutory penalties, declaratory and injunctive relief, interest, attorneys' fees, and costs.

III. FACTUAL ALLEGATIONS

9. ASURION sells insurance for cellular telephones throughout California. ASURION employs customer solutions technicians who travel to ASURION's customer locations to repair and/or replace cellular telephones.

10. Defendants have implemented a policy and practice of failing to pay Plaintiff and other putative class members for all hours worked by failing to pay them their entire hourly rate and/or premium wages and, at times, any wages at all, including the minimum wage, for compensable time spent under the direction and control of ASURION, including return travel time at the end of the shift. ASURION does not pay customer solution technicians any wages whatsoever for their return travel time after the last appointment of the shift, despite it typically being over an hour away or more.

11. Labor Code § 226 provides that every employer is required, "semimonthly or at the time of each payment of wages," to provide each employee an itemized wage statement, including, *inter alia*, the total hours worked by the employee (except for salaried employees), and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Lab. Code § 226(a). Defendants implemented a policy and practice of failing to provide complete and accurate itemized wage statements to Plaintiff and other putative class members as required by Labor Code § 226 in that the wage statements provided did not, among other things, display the total hours worked during the payroll period and gross wages earned. Labor Code § 226(a).

12. Defendants implemented a policy and practice of failing to reimburse Plaintiff and other putative class members for necessary expenditures and losses as required by Labor Code § 2802. During the course of their employment with ASURION, Plaintiff and other putative class members have been required to use their personal vehicles for business purposes. ASURION does not reimburse them for mileage for their return travel after the last appointment of the shift, despite return trips being up to 150 miles away.

IV. CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on behalf of himself and as a class action under Code of Civil Procedure § 382 on behalf of a class of similar situated customer solutions technicians that performed work for Defendants in the State of California. Specifically, Plaintiff seeks to represent the class of similar situated customer solutions technicians and other workers in substantially similar positions that performed work for Defendants in the State of California at any time during the four-year period preceding the filing of this Complaint and up to the present and until compliance with the law. Plaintiff also seeks to represent the following sub-classes of employees who worked for ASURION within the State of California:

- (a) All similar situated customer solutions technicians that performed work for Defendants in the State of California at any time during the four-year period preceding the filing of this Complaint and up to the present and until compliance with the law, inclusive, who were not paid any wages whatsoever, including minimum wage, for certain hours worked, including time spent on work related return travel after the last appointment of the shift;
- (b) All similar situated customer solutions technicians that performed work for Defendants in the State of California at any time during the four-year period preceding the filing of this Complaint and up to the present and until compliance with the law, inclusive, who were not paid in accordance with Labor Code § 510 when they worked more than eight hours in a day;
- (c) All similar situated customer solutions that performed work for Defendants in the State of California at any time during the four-year period preceding the filing of this Complaint and up to the present and until compliance with the law, who did not receive complete and accurate wage statements; and
- (d) All similar situated customer solutions technicians that performed work for Defendants in the State of California at any time during the three-year period preceding the filing of this Complaint and up to the present and until

1 compliance with the law, inclusive, who were not paid all wages due upon
2 discharge or voluntary quit as required by Labor Code §§ 201-203; and

3 (e) All similar situated customer solutions technicians that performed work for
4 Defendants in the State of California at any time during the four-year
5 period preceding the filing of this Complaint and up to the present and until
6 compliance with the law, who were not reimbursed for necessary
7 expenditures and losses incurred at the direction of Defendants as required
8 by Labor Code § 2802;

9 14. The class and sub-classes Plaintiff seeks to represent contain numerous members
10 and are clearly ascertainable. Plaintiff reserves the right under Rule 3.765 of the California Rules
11 of Court to amend or modify the class and sub-class descriptions with greater specificity or
12 further division into additional sub-classes or limitation to particular issues.

13 15. By their unlawful practices and policies, Defendants have violated the rights of
14 employees under the laws and regulations of the State of California. The questions raised are,
15 therefore, of common or general interest to the class members, who have a well-defined
16 community of interest in the questions of law and fact raised in this action.

17 16. Plaintiff's claims are typical of those of the class, as Plaintiff now suffers and has
18 suffered in the past from the same violations of the law as other members of the proposed class.
19 Plaintiff has retained competent counsel to represent him and the class, and Plaintiff will fairly
20 and adequately represent the interests of the class.

21 17. This action may properly be maintained as a class action under Code of Civil
22 Procedure § 382 because there is a well-defined community of interest in the litigation and the
23 proposed class and sub-classes are easily ascertainable.

24 **Numerosity**

25 18. The members of the proposed class are so numerous that joinder of all class
26 members is impracticable. While the precise number of class members has not been determined
27 at this time, Plaintiff is informed and believes that Defendants have employed as many as 200 or
28 more customer solutions technicians in the relevant time period.

19. Plaintiff alleges that Defendants' employment records would contain relevant information as to the number of members of the proposed class.

Commonality

20. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. Those common questions of law and fact include, without limitation, the following:

- (a) Whether Defendants had a policy or practice of failing to pay class members for all straight and overtime hours worked;
- (b) Whether Defendants had a policy and practice of violating Labor Code § 226 by failing to provide required information on wage statements, such as total hours worked and gross wages earned;
- (c) Whether Defendants had a policy and practice of violating Labor Code §§ 201-203 by failing to pay departing class members all wages due at the time of discharge or voluntary quit;
- (d) Whether Defendants violated Labor Code § 2802 by failing to reimburse class members for all necessary expenditures and losses incurred in the direct consequence of the discharge of their duties; and
- (e) Whether Plaintiff and the members of the class are entitled to equitable relief under Business and Professions Code §§ 17200, *et seq.*

Typicality and Adequacy of Representation

21. Plaintiff's claims are typical of the claims of the proposed class. Plaintiff and all members of the proposed class sustained injuries and economic loss arising out of and caused by Defendants' common course of conduct in violation of laws and regulations alleged in this complaint.

22. Plaintiff will fairly and adequately protect the interests of all proposed class members. Plaintiff has no interests that are antagonistic to those of the proposed class and is not subject to any unique defenses. Plaintiff also has retained counsel experienced in class actions and in representing employees and protecting employees' rights.

Superiority of Class Action

23. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed class members is not practicable, and questions of law and fact common to the class predominate over any questions affecting only individual members of the class. Each member of the class has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

24. Class action treatment will allow those similarly-situated persons to litigate their claims in the manner that is most effective and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

25. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all proposed class members is impractical. Even if every proposed class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts if individual litigation of numerous cases were to be required. Individualized litigation also would present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action with respect to some or all of the issues presented herein gives rise to fewer management difficulties, conserves the resources of the court system and the parties and protects the rights of each proposed class member. Further, it prevents the very real harm that would be suffered by numerous putative class members who simply will be unable to enforce individual claims of this size on their own, and by Defendants' competitors, who will be placed at an unfair competitive disadvantage as their punishment for obeying the law. Plaintiff does not anticipate difficulties in the management of this action.

V. REPRESENTATIVE ACTION

26. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt employees whom performed work within the state of California and were not paid any wages

1 whatsoever, including minimum wage, for certain hours worked, including time spent on work
2 related return travel after the last appointment of the shift;

3 27. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor
4 Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt on-site
5 employees who performed work for Defendants within the State of California and did not receive
6 the complete and accurate itemized wage statements required by Labor Code § 226(a).

7 28. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor
8 Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt on-site
9 employees who performed work for Defendants within the State of California and were not paid
10 all wages due at the time of discharge or voluntary quit as required by Labor Code §§ 201-203.

11 29. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor
12 Code §§ 2698, *et seq.* who are or were employed in the State of California by Defendants and
13 who were not fully reimbursed for necessary expenditures and losses as required by Labor Code §
14 2802.

15 30. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor
16 Code §§ 2698, *et seq.*, who are or were employed by Defendants as hourly non-exempt on-site
17 employees who performed work for Defendants within the State of California and were not paid
18 all wages in a timely manner as required by Labor Code § 204.

19 31. There is a well-defined community of interest in the quests of law and fact
20 affecting the aggrieved employees whom Plaintiff seeks to represent. The aggrieved employees'
21 claims against Defendants involve questions of common or general interest, including, but not
22 limited to, the following There is a well-defined community of interest in the question of law and
23 fact affecting the aggrieved employees whom Plaintiff seeks to represent. The aggrieved
24 employees' claims against Defendants involve questions of common or general interest,
25 including, but not limited to, the following: (1) whether Defendants had a policy and practice of
26 failing to pay aggrieved employees any wages whatsoever, including minimum wage, for certain
27 hours worked, including work related return travel; (2) whether Defendants had a policy and
28 practice of violating Labor Code § 226 by failing to provide required information on wage

1 statements, such as gross wages earned, and whether those statements were accurate; (3) whether
2 Defendants had a policy and practice of failing to pay departing aggrieved employees all wages
3 due at the time of discharge or voluntary quit in violation of Labor Code §§ 201-203; (4) whether
4 Defendants had a policy and practice of failing to reimburse all necessary expenditures and losses
5 incurred in the direct consequence of the discharge of their duties (5) whether Defendants had a
6 policy and practice of failing to pay aggrieved employees in a timely manner as required by
7 Labor Code § 204.

8 32. Plaintiff's claims are typical of the claims of the members of the aggrieved
9 employees whom Plaintiff seeks to represent and their interests are consistent with, and not
10 antagonistic to, those of the other aggrieved employees. Plaintiff will fairly and adequately
11 represent the interests of the aggrieved employees because Plaintiff is also an aggrieved employee
12 and his claims are typical of those of the aggrieved employees. Plaintiff has retained attorneys
13 who are experienced in the prosecution of class and representative actions, and Plaintiff intends to
14 prosecute this action vigorously.

15 33. Common questions of law and fact exist as to all aggrieved employees that
16 predominate over any other questions affecting only individual aggrieved employees.

17 34. Plaintiff requests permission to amend the Complaint to include additional
18 representatives if Plaintiff is deemed not to be an adequate representative of the aggrieved
19 employees.

20 **VI. FIRST CAUSE OF ACTION**

21 **(UNFAIR BUSINESS PRACTICES – CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)**

22 35. Plaintiff repeats and realleges each and every paragraph above as though fully set
23 forth herein.

24 36. California Business and Professions Code §§ 17200, *et seq.*, prohibit unfair
25 competition in the form of any unlawful, unfair, deceptive, or fraudulent business act or practice.

26 37. Beginning at an exact date unknown to Plaintiff, but at least during the four-year
27 period preceding the filing of this Complaint and up to the present, Defendants committed
28 unlawful acts and practices as defined by California Business and Professions Code §§ 17200, *et*

1 *seq.* Defendants have had a policy and practice of engaging in unlawful and unfair business
2 practices including, but not limited to, violations of:

- 3 (a) Labor Code § 1194 (failure to pay all wages due, including minimum,
4 overtime, and double-time wages);
5 (b) Labor Code §§ 201-203 (failure to pay all wages at time of discharge);
6 (c) Labor Code § 2802 (failure to reimburse business expenses); and
7 (d) Industrial Welfare Commission IWC Wage Order No. 4-2001.

8 38. The violations of those laws and the acts and practices described in this Complaint
9 constitute unlawful, unfair, deceptive and fraudulent business acts and practices and unfair
10 competition within the meaning of Business and Professions Code §§ 17200, *et seq.*

11 39. As a direct and proximate result of those acts and practices, Defendants have
12 received and continue to hold as ill-gotten gains money and property belonging to Plaintiff and
13 the class, in that Defendants have profited in those amounts from their unlawful practices.

14 40. Business and Professions Code § 17203 provides that the Court may restore to any
15 person in interest any money or property which may have been acquired by means of unfair
16 competition and order restitution by Defendants to Plaintiff for the practices alleged in this
17 complaint. Plaintiff and putative class members are entitled under Business and Professions Code
18 §§ 17203 and 17208 to restitution and restoration of all wages and business expenses unlawfully
19 withheld at any time during the four-year period preceding the filing of this Complaint and up
20 through the present and until the violations have been corrected, together with all civil penalties
21 owed in connection with those violations. Plaintiff will, upon leave of the Court, amend this
22 Complaint to state those amounts when they are ascertained.

23 41. Plaintiff's success in this action will enforce important rights affecting the public
24 interest and, in that regard, Plaintiff sues on behalf of the proposed class as well as on behalf of
25 himself and the general public. Plaintiff seeks and is entitled to unpaid wages, injunctive relief,
26 and any other remedy owing to Plaintiff and all others similarly situated.

27 42. Injunctive relief is necessary and appropriate to prevent Defendants from repeating
28 or continuing their wrongful business practices alleged above.

43. In order to prevent Defendants from profiting and benefiting from their wrongful and illegal policies and practices, an order requiring Defendants to restore to Plaintiff all monies and property unlawfully gained through Defendants' unlawful practices is appropriate and necessary.

44. Plaintiff takes upon himself enforcement of these laws and lawful claims. There is a financial burden incurred in pursuing this action and it would be against the interests of justice to penalize Plaintiff by forcing him to pay attorneys' fees from the recovery in this action. Therefore, an award of attorneys' fees is appropriate under California Code of Civil Procedure § 1021.5.

Wherefore, Plaintiff prays for relief as set forth below.

VII. SECOND CAUSE OF ACTION
(UNPAID WAGES, OVERTIME PAY, MINIMUM WAGES AND LIQUIDATED
DAMAGES – LABOR CODE §§ 510, 1194 AND 1194.2,
Los Angeles Citywide Minimum Wage Ordinance, Los Angeles County Minimum Wage
Ordinance, San Francisco City and County Minimum Wage Ordinance)

45. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

46. Labor Code § 1194 allows an individual a private right of action to pursue unpaid wages, including unpaid minimum wages and overtime. If an employer does not pay an employee at least the minimum wage for all hours worked, Labor Code § 1194.2 allows an employee to recover liquidated damages equal to the amount up unpaid wages.

47. Labor Code § 510 and IWC Wage Order 4-2001, require, among other things:

- (a) One and one-half times the employee's regular rate of pay for all hours worked in excess of eight hours and up to and including 12 hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight hours on the seventh consecutive day of work in a workweek.

48. Defendants had a policy and practice of failing to pay Plaintiff and other putative class members for all hours worked by failing to pay them any wages, including minimum wages and overtime pay, for certain hours worked, including time spent on return travel after the last appointment of the shift.

49. Plaintiff seeks to recover all unpaid wages and overtime pay due to Plaintiff and other putative class members, as well as minimum wages and liquidated damages, if appropriate, and interest, under Labor Code §§ 218.6, 1194 and 1194.2 (as well as the higher minimum wage rates established by the Los Angeles Citywide Minimum Wage Ordinance, and the Los Angeles County Minimum Wage Ordinance, and the San Francisco City and County Minimum Wage Ordinance, for those customer solutions technicians who worked in those jurisdictions).

50. Plaintiff seeks attorneys' fees and costs under Labor Code § 1194, which provides for a private right of action to recover unpaid minimum wage and overtime compensation and also provides for the recovery of attorneys' fees and costs.

Wherefore, Plaintiff prays for relief as set forth below.

VIII. THIRD CAUSE OF ACTION

(UNPAID WAGES, OVERTIME PAY AND MINIMUM WAGES – LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

51. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

52. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

53. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 1194, 1198 and 1199.

54. By the actions alleged herein, Defendants failed to pay Plaintiff and other

aggrieved employees overtime on all occasions when it was required by law, and failed to pay aggrieved employees any wages, including minimum wages and overtime pay, for certain hours worked, in violation of Labor Code §§ 1194, 1198 and 1199.

55. Therefore, Plaintiff and all current and former aggrieved employees demand the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 1194, 1198 and 1199.

56. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code §§ 1194 and 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

IX. FOURTH CAUSE OF ACTION

(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)

57. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

58. As alleged above, during all or some portion of the proposed class period, Defendants violated Labor Code § 226 through their practice of failing to provide their employees, including Plaintiff and members of the proposed class, with complete and accurate itemized wage statements. Among other things, the wage statements provided by Defendants violated Labor Code § 226(a) by failing to state the total hours worked and gross wages earned.

59. Under Labor Code § 226(e), Plaintiff and members of the proposed class are entitled to recover the greater of actual damages or \$50 for the initial pay period in which a violation occurred and \$100 for each subsequent pay period in which Defendants failed to comply with the statute, up to a maximum of \$4,000 per employee.

60. Under Labor Code § 226(g), Plaintiff is entitled to injunctive relief and an order of this Court requiring Defendants to comply with all provisions of Labor Code § 226. Plaintiff also is entitled under Labor Code § 226(g) to an award of attorneys' fees and costs incurred in bringing this action.

Wherefore, Plaintiff prays for relief as set forth below.

X. FIFTH CAUSE OF ACTION

**(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS –
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

61. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

62. California Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

63. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

64. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 226(a) and 226.3.

65. By the actions alleged herein, Defendants misclassified Plaintiff and other aggrieved employees as independent contractors and failed to comply with Labor Code §§ 226(a) and 226.3 as it relates to Plaintiff and the other aggrieved employees. Among other things, the wage statements provided by Defendants violated Labor Code § 226(a) by failing to state the total hours worked and gross wages earned.

66. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor code § 2699(f) for violations of Labor Code §§ 226(a) and 226.3.

67. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XI. SIXTH CAUSE OF ACTION

(LABOR CODE §§ 201-203)

68. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

69. Labor Code §§ 201 and 202 require an employer to pay its employees all wages

1 due within the time specified by law. Labor Code § 203 provides that if an employer willfully
2 fails to pay those wages within the time specified by Labor Code §§ 201 or 202, the employer
3 must continue to pay the subject employees' wages day-by-day, weekends included, until the
4 back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

5 70. Defendants unfairly and unlawfully have had a policy and practice of violating
6 Labor Code §§ 201 and 202 by failing to pay Plaintiff and the class all wages earned in their
7 employment within the time specified by those sections.

8 71. Plaintiff and all other putative class members who ceased employment with
9 Defendants are entitled to unpaid compensation but thus far have not received that compensation.

10 72. More than 30 days have passed since Plaintiff and certain class members left
11 Defendants' employ.

12 73. As a consequence of Defendants' willful failure to compensate Plaintiff and
13 putative class members timely for all hours worked, Plaintiff and class members whose
14 employment ended at any time the during the four-year period preceding the filing of this
15 Complaint and up through the present and until compliance with the law are entitled to 30 days'
16 wages under Labor Code § 203, together with interest.

17 Wherefore, Plaintiff prays for relief as set forth below.

18 **XVI. SEVENTH CAUSE OF ACTION**

19 **(LABOR CODE §§ 201-203 –**

20 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

21 74. Plaintiff repeats and realleges each and every paragraph above as though fully set
22 forth herein.

23 75. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain
24 civil penalties on their own behalf and on behalf of other current and former employees.

25 76. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code
26 Private Attorneys General Act of 2004 because he is a person who was employed by the alleged
27 violator and against whom one or more of the alleged violations was committed.

28 77. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil

1 action against Defendants for violations of Labor Code §§ 201-203.

2 78. By the actions alleged herein, Defendants have failed to comply with Labor Code
3 §§ 201-203 as they relate to Plaintiff and the other aggrieved employees.

4 79. Therefore, Plaintiff, for himself and all current and former aggrieved employees,
5 demands the civil penalties provided by Labor Code § 2699(f) for violations of Labor Code §§
6 201-203.

7 80. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code §
8 2699(g)(1).

9 Wherefore, Plaintiff prays for relief as set forth below.

10 **XVII. EIGHTH CAUSE OF ACTION**

11 **(FAILURE TO REIMBURSE BUSINESS EXPENSES – LABOR CODE § 2802)**

12 81. Plaintiff repeats and realleges each and every paragraph above as though fully set
13 forth herein.

14 82. At all relevant times, Labor Code § 2802 has required an employer to reimburse an
15 employee for necessary expenditures and losses incurred by an employee in the direct
16 consequence of the discharge of his or her duties.

17 83. As alleged above, during all or some portion of the proposed class period,
18 ASURION violated Labor Code § 2802 through its practice of failing to reimburse Plaintiff and
19 proposed class members for all necessary expenditure and losses.

20 84. Defendants' failure to comply with Labor Code § 2802 has damaged Plaintiff and
21 proposed class members. Plaintiff and proposed class members seek reimbursement for the
22 expenditure and losses incurred in the discharge of their respective duties and/or on behalf of
23 Defendants, together with interest and attorneys' fees as provided by Labor Code §§ 218.6 and
24 2802(c).

25 85. Defendants' violations of Labor Code § 2802 as alleged above are ongoing and
26 will continue unless and until the Court enter an injunction barring those violations.

27 Wherefore, Plaintiff prays for relief as set forth below.
28

XVIII. NINTH CAUSE OF ACTION

(LABOR CODE § 2802 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

86. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

87. Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

88. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

89. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 2802.

90. By their actions as alleged herein, Defendants have failed to comply with Labor Code § 2802 as it relates to Plaintiff and the aggrieved employees.

91. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for the violations of Labor Code § 2802.

92. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XIX. TENTH CAUSE OF ACTION

(LABOR CODE § 204 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

93. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

94. California Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

95. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged

violator and against whom one or more of the alleged violations was committed.

96. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 204.

97. By their actions as alleged herein, Defendants have failed to comply with Labor Code §§ 201-203 as they relate to Plaintiff and the other aggrieved employees.

98. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 204.

99. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

- i. For an order certifying this action as a class action;
- ii. For disgorgement of profits and restitution and restoration of all costs incurred, sums or property unlawfully withheld and/or losses caused by the policy and practice of failing to pay all minimum wage, overtime and double-time compensation owed to Plaintiff and the class members in violation of Business and Professions Code §§ 17200, *et seq.*;
- iii. For disgorgement of profits and restitution and restoration of all costs incurred, sums or property unlawfully withheld and/or losses caused by the policy and practice of violating Business and Professions Code §§ 17200, *et seq.* by failing to reimburse employees for their expenditures and losses incurred in the discharge of their respective duties on behalf of Defendants;
- iv. For compensatory damages in amounts according to proof at time of trial representing the amount of unpaid minimum wage, overtime and double-time compensation owed to Plaintiff and the class members for the policy and practice of failing to pay all wages due and owing (as well as the higher minimum wage rates established by the Los Angeles Citywide

Minimum Wage Ordinance, and the Los Angeles County Minimum Wage Ordinance, and the San Francisco City and County Minimum Wage Ordinance, for those customer solutions technicians who worked in those jurisdictions), as well as liquidated damages as appropriate, during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

- v. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 510, 1194.2, 1197, 1197.1, 1198 and 1199 (failure to pay minimum wages, overtime and double-time) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- vi. For compensatory damages in amounts according to proof at trial owed to Plaintiff and class members representing the amount of unpaid reimbursement for the expenditures and losses incurred in the discharge of their respective duties on behalf of Defendants in violation of Labor Code § 2802 during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;
- vii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code § 2802 (failure to reimburse business expenses) during the applicable limitations period preceding the filing of the Complaint and up through and including the present and until the date of compliance with the law;
- viii. For compensatory damages to Plaintiff and class members in an amount according to proof at time of trial for the policy and practice of failing to provide accurate, itemized wage statements during the applicable

limitations period preceding the filing of this Complaint and up through the present and until the date of compliance with the law;

ix. For the statutory amounts provided by Labor Code § 226(e) for Plaintiff and class members during the applicable limitations period preceding the filing of this Complaint and up through and including the present and until the date of compliance with the law;

x. For civil penalties as specified by Labor Code § 226.3 for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the filing of the Complaint. (Should Labor Code § 226.3 be found not to apply to Defendants' violations of Labor Code § 226(a), Plaintiff alternatively seeks the civil penalties specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the filing of the Complaint.)

xi. For waiting time penalties as provided by Labor Code § 203 for Plaintiff and class members;

xii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 201, 202 and 203 (failure to pay departing employees all wages due and owing) during the applicable limitations period preceding the filing of the Complaint and up through and including the present and until the date of compliance with the law;

xiii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each aggrieved employee for each violation of Labor Code § 204b (failure to pay wages in a timely manner) during the applicable limitations period

preceding the filing of the Complaint and up through and including the present and until the date of compliance with the law;

xiv. For reasonable attorneys' fees and costs as allowed by Labor Code §§ 226(e), 226(g), 1194(a), 2802 and Code of Civil Procedure § 1021.5;

xv. For all interest as required by Labor Code § 218.6 and other applicable law;

xvi. For all costs of this suit as allowed by law, including Labor Code §§ 226(e), 226(g), 1194, and 2802; and

xvii. For such other and further relief as the Court may deem proper.

Dated: August 18, 2020

Respectfully submitted,

KELLER GROVER LLP

By:



ERIC A. GROVER

ROBERT SPENCER

Attorneys for Plaintiff and the Proposed Class

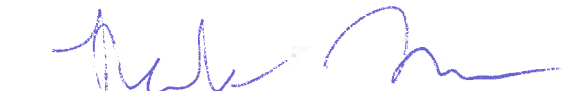
JURY TRIAL DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

Dated: August 18, 2020

KELLER GROVER LLP

By:



ERIC A. GROVER

ROBERT SPENCER

Attorneys for Plaintiff and the Proposed Class