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all similarly situated aggrieved employees

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF ORANGE**

13
14 LOGAN SHANE CRABTREE, individually,
on behalf of the Class, and all similarly situated
15 aggrieved employees

16 Plaintiff,

17 v.

18 VIVINT, INC., a Delaware corporation;
VIVINT SMART HOME, INC., a Delaware
19 corporation; SMART HOME PROS, INC., a
Delaware corporation; ARM SECURITY,
20 INC., a corporation state unknown; and DOES
1 through 50, inclusive,

21 Defendants.
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Case No: 30-2020-01141910-CU-OE-CXC

*Assigned to for all purposes to:
Judge Glenda Sanders, Dept. CX-101*

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Expense Reimbursement (Lab. Code § 2802);
2. Unpaid Wages (Lab. Code §§ 201-202 & 218);
3. Unpaid Minimum Wage (Lab. Code §§ 1194 & 1197);
4. Waiting Time Penalties (Lab. Code §203);
5. Inaccurate Itemized Wage Statements (Lab. Code § 226(a));
6. Violation of Bus. & Prof. Code § 17200 et seq.;
7. Declaratory Relief (C.C.P. § 1060 & Cal. Const. Art. XV § 1); and
8. Recovery of Penalties Under the California Labor Code Private Attorneys General Act (PAGA)

RELATED TO ROA # 2

Date Complaint Filed: 6/3/2020
Trial Date: None

1 Plaintiff LOGAN SHANE CRABTREE (hereinafter "Plaintiff"), by and through his
2 attorneys of record, hereby alleges on personal knowledge as to himself and on information and
3 belief as to all others, as follows:

4 **PARTY ALLEGATIONS**

5 1. Defendant VIVINT, INC., ("Vivint, Inc.") is a corporation organized and existing
6 under the laws of the State of Utah which lawfully or unlawfully does business in California as
7 "Vivint, Inc." Vivint, Inc., is a home security and solar power system contractor and during all
8 relevant times held California Contractor's State License Number 874794 and Bureau of Security
9 and Investigative Services License Number 6286. Vivint's principal place of business in the State
10 of California is located at 585 N Commonwealth Ave, Fullerton, California 92831.

11 2. Defendant VIVINT SMART HOME, INC. ("Vivint Smart Home") is a corporation
12 organized and existing under the laws of the State of Delaware which lawfully or unlawfully does
13 business in California as "Vivint Smart Home." Although Vivint Smart Home purportedly conducts
14 sales and installation of home security and solar power systems in the State of California, Vivint
15 Smart Home is not licensed by the California Contractor's State License Board or the Bureau of
16 Security and Investigative Services. Vivint Smart Home's principal place of business in the State
17 of California is located at 585 N Commonwealth Ave, Fullerton, California 92831.

18 3. Defendant SMART HOME PROS, INC. ("Smart Home Pros") is a corporation
19 organized and existing under the laws of the State of Utah which lawfully or unlawfully does
20 business in California as "Smart Home Pros." Smart Home Pros is a home security and solar power
21 system contractor and during all relevant times held California Contractor's State License Number
22 993939 and Bureau of Security and Investigative Services License Number 7019. Smart Home
23 Pros' principal place of business in the State of California is located at 585 N Commonwealth Ave,
24 Fullerton, California 92831.

25 4. Defendant ARM SECURITY, INC., ("Arm Security") is a corporation organized
26 and existing under the laws of a state unknown, which lawfully or unlawfully does business in
27 California as "Arm Security." Arm Security is a home security and solar power systems contractor
28 and during all relevant times held California Contractors State License Number 993939 and Bureau

1 of Security and Investigative Services License Number 7019. Arm Security's principal place of
2 business in the State of California is located at 585 N Commonwealth Ave, Fullerton, California
3 92831.

4 5. Defendants Vivint, Inc., Vivint Smart Home, Smart Home Pros, and Arm Security
5 are herein referred to collectively as "VIVINT."

6 6. Plaintiff LOGAN SHANE CRABTREE is an adult resident of the State of
7 California. Plaintiff was employed by Defendants during the four-year period preceding the filing
8 of this Complaint in Orange County, California. Plaintiff worked for Defendants in the job category
9 of "Sales Representative."

10 7. This action is brought to seek remedies from Defendants for certain wage and hour
11 violations that were committed by Defendants both during the time that VIVINT employed Plaintiff
12 and the Class (as defined below) and the four-year period preceding the date of this Complaint.

13 8. The true names and capacities, whether individual, corporate, associate, or
14 otherwise, of Defendants sued herein as DOES 1 through 50, inclusive, are currently unknown to
15 Plaintiff, who therefore sues such Defendants by fictitious names under Code of Civil Procedure §
16 474. Plaintiff is informed and believes and thereon alleges that each Defendant is legally
17 responsible for in some manner for the unlawful acts alleged herein, acted in all respects pertinent
18 to this action as the joint employer of Plaintiff, is an agent of the other Defendants, carried out a
19 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant
20 are legally attributable to the other Defendants, including DOES 1 through 50.

21 9. Plaintiff is informed, believes and thereon alleges that each of the Defendants is the
22 agent, joint venture, managing agent, and/or employee of each of the remaining Defendants and in
23 performing the acts hereinafter alleged, each was acting within the course and scope of said agency,
24 employment and/or joint venture with the advance knowledge, acquiescence or subsequent
25 ratification of each and every remaining Defendant.

26 **ALTER EGO ALLEGATIONS**

27 10. Plaintiff is informed and believes and thereon alleges that some of the corporations,
28 limited liability companies, and entities named as Defendants herein, including but not limited to

1 VIVINT, INC., VIVINT SMART HOME, INC., SMART HOME PROS, INC., ARM SECURITY,
2 INC., and DOES 1 through 50, (hereinafter occasionally collectively referred to as the “ALTER
3 EGO CORPORATIONS”), and each of them, were at all times relevant the alter ego corporations,
4 limited liability companies, or entities of each other Defendant by reason of the following:

5 (a) Plaintiff is informed and believes and thereon alleges that said individual
6 defendants, at all times herein mentioned, dominated, influenced and controlled each of the ALTER
7 EGO CORPORATIONS and the officers thereof as well as the business, property, and affairs of
8 each of said corporations, limited liability companies or entities or entities.

9 (b) Plaintiff is informed and believes and thereon alleges that, at all times herein
10 mentioned, there existed and now exists a unity of interest and ownership between said individual
11 defendants and each of the ALTER EGO CORPORATIONS; the individuality and separateness of
12 said individual defendants and each of the ALTER EGO CORPORATIONS have ceased.

13 (c) Plaintiff is informed and believes and thereon alleges that, at all times since
14 the incorporation of each, each ALTER EGO CORPORATION has been and now is a mere shell
15 and naked framework which said individual defendants used as a conduit for the conduct of their
16 personal business, property and affairs.

17 (d) Plaintiff is informed and believes and thereon alleges that, at all times herein
18 mentioned, each of the ALTER EGO CORPORATIONS was organized by said individual
19 defendants as a device to avoid individual liability and for the purpose of substituting financially
20 irresponsible corporations, limited liability companies or entities in the place and stead of said
21 individual defendants, limited liability companies or entities and each of them, and accordingly,
22 each ALTER EGO CORPORATION was formed with capitalization totally inadequate for the
23 business in which said corporation, limited liability company or entity was engaged.

24 (e) Plaintiff is informed and believes and thereon alleges that each ALTER EGO
25 CORPORATION is insolvent.

26 (f) By virtue of the foregoing, adherence to the fiction of the separate corporate
27 existence of each of the ALTER EGO CORPORATIONS would, under the circumstances, sanction
28 a fraud and promote injustice in that Plaintiff would be unable to realize upon any judgment in his

1 favor.

2 12. Plaintiff is informed and believes and thereon alleges that, at all times relevant
3 hereto, the individual defendants and the ALTER EGO CORPORATIONS acted for each other in
4 connection with the conduct hereinafter alleged and that each of them performed the acts
5 complained of herein or breached the duties herein complained of as agents of each other and each
6 is therefore fully liable for the acts of the other.

7 **JURISDICTION & VENUE**

8 13. This Court has jurisdiction over this controversy under Article 6, § 10 of the
9 California Constitution and California Code of Civil Procedure § 410.10 and various provisions of
10 the Labor Code as alleged herein. Venue as to each Defendant is proper in this judicial district,
11 pursuant to Code of Civil Procedure § 395(a) in that Plaintiff and a substantial number of members
12 of the class on whose behalf this action is brought performed employment services in this judicial
13 district, a substantial part of the events or omissions giving rise to the claims stated herein arose
14 within this judicial district, and and/or each Defendant either is found, maintains offices, transacts
15 business, and/or has an agent therein.

16 14. The amount in controversy as to the Plaintiff and each class member's individual
17 claims do not exceed \$75,000.

18 **GENERAL ALLEGATIONS**

19 15. This is an action for relief from, *inter alia*, Defendants' failure to reimburse business
20 expenses and failure to pay wages to their California Sales Representatives employees, and denial
21 to Plaintiff and the Class the protections that the California Labor Code affords employees, as
22 further alleged herein.

23 16. Defendants are home security and solar power system contractors in the State of
24 California who sell and install residential security and solar power systems to California residents.
25 As such, Defendants are an "alarm company operator" as defined by Business and Professions Code
26 § 7599.2 et seq. Defendants are also "contractors" as defined by Business and Professions Code §
27 7150.1 and more specifically, "home improvement contractors" as defined in Business and
28 Professions Code § 7150.1.

1 17. To facilitate the sales of home security and solar power systems, Defendants employ
2 numerous California residents to conduct door to door sales and lead generation in counties
3 throughout the State of California. Each person employed by Defendants who sold solar power
4 systems was required by California law to obtain a “home improvement salesperson” license issued
5 by the Contractor’s State Licensing Board (“CSLB”) as defined by Business and Professions Code
6 7150.1 (the “HIS License”). Each person employed by Defendants who sold home security systems
7 was required by California law to obtain an “alarm agent” license (also called “alarm company
8 employee license”) issued by the Bureau of Security and Investigative Services (“BSIS”) as defined
9 by Business and Professions Code § 7599.2 et seq. (the “BSIS License”).

10 18. During the four-year period preceding the filing of this Complaint, Plaintiff worked
11 for Defendants in the State of California and obtained an HIS license and a BSIS license.

12 19. In establishing the working relationship, Defendants classified all of these
13 employees as direct sellers for payroll tax purposes and employees for other purposes.

14 20. During the four-year period preceding the filing of this Complaint, on an annual
15 basis, Plaintiff and the Class were each required to execute a Employment Agreements which
16 established duties, obligations, and “direct seller” classification to VIVINT, and related
17 compensation structure. The Employment Agreements contain numerous unlawful terms for
18 employees, including, but not limited to, choice of law, jurisdiction, and venue provisions, and post
19 termination non-solicitation clauses.

20 21. Upon information and belief, in reliance on the Employment Agreements, VIVINT
21 did not provide worker’s compensation insurance, unemployment insurance, or afford Plaintiff and
22 members of the Class the rights or protections afforded to employees under the California Labor
23 Code, as further alleged herein.

24 22. During all relevant times, Defendants failed to pay Plaintiff and the Class minimum
25 wage for training and non-sales meeting time, failed to pay earned wages upon termination of
26 employment including accrued paid time off (“PTO”) and earned but unpaid residual commissions,
27 failed to reimburse Plaintiff and the Class for business expenses, failed to provide Plaintiff and the
28 Class with accurate itemized wage statements, failed to pay the employer’s share of payroll taxes

1 and benefits, and otherwise denied Plaintiff and the Class numerous protections of the California
2 Labor Code afforded employees, as further alleged herein.

3 **CLASS ACTION ALLEGATIONS**

4 23. This action may be properly maintained as a class action pursuant to § 382 of the
5 Code of Civil Procedure. The plaintiff class is sufficiently numerous, since they are estimated to
6 include hundreds of persons throughout California, the joinder of whom in one action is
7 impracticable, and the disposition of whose claims in a class action will provide substantial benefits
8 to both the parties and the Court.

9 24. **Class Definition:** Without prejudice to later revision, the Class that Plaintiff seeks
10 to represent and certify is composed of:

11 All persons currently and formerly employed by VIVINT in California relating to
12 the sale of home security and solar power systems (“the Class”) between four years
13 prior to the filing of this action through the date of judgment (the “Class Period”).

14 25. **Ascertainable Class:** The Class is ascertainable in that each member can be
15 identified using information contained in Defendants’ records.

16 26. **Common Questions of Law or Fact Predominate:** There is a well-defined
17 community of interest in the questions of law and fact involved affecting the parties to be
18 represented for the Class. The questions of law and fact common to the Class predominate over
19 questions which may affect individual members of the Class. These questions of law and fact
20 include, but are not limited to, the following:

21 (a) Whether Defendants paid Plaintiff and the Class all minimum wage,
22 overtime and other earned wages;

23 (b) Whether Defendants required Plaintiff and the Class to pay necessary
24 expenses or losses incurred by them in direct consequence to the discharge of their duties while
25 employed by Defendant, in violation of § 2802;

26 (c) Whether Defendants failed to promptly pay Plaintiff and the Class all wages
27 when earned and owed within 72 hours of the date they quit or were terminated in violation of
28 Labor Code §§ 201, 202, and 203;

1 (d) Whether Defendants failed to provide Plaintiff and the Class with accurate
2 itemized wage statements, in violation of § 226(a);

3 (e) Whether Defendants violated §§ 201, 202, 203, 204, 210, 218.6, 221, 225,
4 225.5, 226, 226.2, 226.3, 227.3, 246, 432.5, 510, 558, 1021, 1021.5, 1174, 1174.5, 1194, 1194.2,
5 1194.5, 1197, 1197.1, 1198, 1199, 2751, 2800, & 2802 of the California Labor Code, Wage Order
6 7, 29 C.F.R. § 541.705, 29 C.F.R. § 785.27, 29 C.F.R. § 785.28, 29 C.F.R. § 785.29, California
7 Unemployment Insurance Code §§ 650, 976, 986, 987, 1110, and 13020, § 17200 of the California
8 Bus. & Prof. Code and the applicable IWC Orders, as alleged herein;

9 (f) Whether Defendants should be ordered to disgorge all monies unlawfully
10 and unfairly received from Plaintiff and the Class;

11 (g) Whether Defendants should be ordered to take corrective actions and provide
12 notice regarding its violations of California's Labor Code; and

13 (h) Whether the Employment Agreements and other agreements contained
14 provisions which violate California law and Defendants should be permanently enjoined from
15 enforcing.

16 27. **Numerosity:** The Class is so numerous that the individual joinder of all members
17 is impractical under the circumstances of this case. While the exact number of members of the
18 Class are unknown to Plaintiff at this time, Plaintiff is informed and believes each of the Class
19 consists of hundreds of individuals. Individual joinder of each member of the Class is also
20 impracticable because the individual members are geographically disbursed.

21 28. **Typicality:** Plaintiff and the each of the Class' claims arise from and were caused
22 by Defendants' wrongful conduct. Plaintiff is asserting claims that are typical of the claims of each
23 member of the Class. Plaintiff is like all other members of the Class because Plaintiff has suffered
24 the same harm as those suffered by the Class. Since Plaintiff's claims and the claims of each
25 member of the Class all derive from a common nucleus of operative facts, Plaintiff is asserting
26 claims that are typical of the claims of the entirety of each of the Class.

27 29. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of
28 the Class in that each has no disabling conflicts of interest that would be antagonistic to those of

1 the other members of the Class. Plaintiff seeks no relief that is antagonistic or adverse to the
2 members of the Class, and the infringement of the rights and the damages he has suffered are typical
3 of all other members of the Class so that he will adequately represent the Class. Plaintiff has
4 retained competent counsel experienced in class action litigation to further ensure such protection
5 and intends to prosecute this action vigorously.

6 30. **Superiority:** The nature of this action and the nature of laws available to Plaintiff
7 and the Class make the use of the class action format a particularly efficient and appropriate
8 procedure to afford relief to Plaintiff and the Class for the wrongs alleged because:

9 (a) The individual damages involved, while not insubstantial, are such that
10 individual actions or other individual remedies are impracticable and litigating individual actions
11 would be too costly;

12 (b) This case involves multiple large businesses and a large number of individual
13 residents with many relatively small claims with common issues of law and fact;

14 (c) If each member of the Class were required to file an individual lawsuit, the
15 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit
16 and overwhelm the limited resources of each individual member of the Class with their vastly
17 superior financial and legal resources;

18 (d) The costs of individual suits could unreasonably consume the amounts that
19 would be recovered;

20 (e) Proof of a common business practice or factual pattern which Plaintiff
21 experienced is representative of that experienced by the Class and will establish the right of each
22 of the members to recover on the causes of action alleged; and

23 (f) Individual actions would create a risk of inconsistent results and would be
24 unnecessary and duplicative of this litigation.

25 31. Notice to the members of the Class may be made by first-class mail or email
26 addressed to all persons who have been individually identified by Defendants through access to
27 Defendants' records. Alternatively, if Defendants cannot produce a list of Class members' names
28 and addresses, the members of the Class may be notified by publication in the appropriate media

1 outlets, and by posting notices in Defendants' places of business in the State of California.

2 32. Plaintiff and the Class have all similarly suffered irreparable harm and damages as
3 a result of Defendants' unlawful and wrongful conduct. This action will provide substantial
4 benefits to Plaintiff and the Class and the public since, absent this action, Plaintiff and the members
5 of the Class will continue to suffer losses, thereby allowing Defendants' violations of law to proceed
6 without remedy and allowing Defendants to retain the proceeds of their unlawful practices.

7
8 **FIRST CAUSE OF ACTION**
9 **(Violation of Labor Code § 2802 -Expense Reimbursement)**
10 **Plaintiff and the Class**
11 **As Against All Defendants and DOES 1-50**

12 33. Plaintiff hereby incorporates all previous paragraphs by this reference.

13 34. Labor Code § 2802(a) provides, that "[a]n employer shall indemnify his or her
14 employee for all necessary expenditures or losses incurred by the employee in direct consequence
15 of the discharge of his or her duties..."

16 35. During the Class Period, Defendants failed to indemnify from or reimburse Plaintiff
17 and the Class members for business expenses including, but not limited to, Defendants' lawful
18 portion of state income tax contributions, state unemployment insurance contributions, and
19 contributions to the state disability fund. As a result, Plaintiff and the Class were required to pay
20 100% of all payroll taxes incurred in direct consequence to the discharge of their duties while
21 employed by Defendants during the Class Period.

22 36. During the Class Period, Defendants also failed to indemnify from or reimburse
23 Plaintiff and the Class members for all business expenses incurred by them, including personal
24 cellular phones, personal electronic tablets (iPads), data plans, personal vehicle usage, travel
25 expenses, and lodging expenses in violation of Labor Code section 2802.

26 37. During the Class Period, Plaintiff and the Class members were required to connect
27 remotely to VIVINT's server through proprietary Apple-brand applications, specifically "Street
28 Genie" for lead generation and sales of home security systems and "NEO" for lead generation and
sales of solar power systems. If Plaintiff and the Class members were unable to connect to
VIVINT's server through either Street Genie or NEO, they were unable to complete the work order

1 process for sales they made or leads they generated while out in the field. Street Genie and NEO
2 were only compatible with proprietary Apple-brand devices. As a result, Plaintiff and the Class
3 members were required to purchase iPads, iPhones, and/or other similar Apple devices, as necessary
4 to complete work orders in direct consequence to discharge of their duties. VIVINT failed to
5 indemnify from and reimburse Plaintiff and the Class members for same, in violation of this section.

6 38. The acts, omissions, and practices of VIVINT as alleged herein constituted
7 violations of Labor Code § 2802.

8 39. Pursuant to § 2802, subd. (c), as representative of the Class, Plaintiff seeks to recover
9 all necessary expenditures or losses incurred by Plaintiff and the Class members, including all
10 reasonable costs, attorneys' fees and interest accruing from the date of expenditure or loss.

11 **SECOND CAUSE OF ACTION**
12 **(Violation of Labor Code §§ 201, 202, 204 & 218 – Unpaid Wages)**
13 **Plaintiff and the Class**
As Against All Defendants and DOES 1-50

14 40. Plaintiff hereby incorporates all previous paragraphs by this reference.

15 41. California has a strong public policy that favors full and
16 prompt payment of wages due an employee because “[i]t has long been recognized that wages are
17 not ordinary debts, that they may be preferred over other claims, and that, because of the economic
18 position of the average worker and, in particular, his dependence on wages for the necessities of
19 life for himself and his family, it is essential to the public welfare that he receive his pay when it is
20 due.” *Kerr's Catering Service v. Department of Industrial Relations* (1962) 57 Cal.2d 319,
21 326 (internal quotes omitted).

22 42. Labor Code §§ 201, 202, 204, and 218 require that an employer pay all wages earned
23 and due to an employee promptly when earned, but not less than semi-monthly.

24 43. While Plaintiff and the Class members were employed by Defendants during the
25 Class Period, Defendants engaged in a pattern of practice of withholding payment of Plaintiff's and
26 the Class members' earned commissions at the time they were earned (or otherwise capable of
27 being calculated).

28 //

1 (a) For commission wages earned through the sale of home security systems,
2 Defendants paid only a portion of earned wages up front as an “advance” on
3 commission, and unlawfully retained the remaining portion of the commission
4 until after the end of the employee’s seasonal sales period, paying the remainder
5 as “Back End Commissions” and/or “Year End Commissions,” long after the
6 wages had been earned;

7 (b) For commission wages earned through the sale of solar power systems,
8 Defendants paid only a portion of the earned wages up front and paid the
9 remainder of the earned commissions over an eighteen (18) month period as
10 “Residual Commissions.” Defendants therefore willfully failed to pay Plaintiff
11 and the Class all commissions earned by them in violation of this section.

12 44. While Plaintiff and the Class members were employed by Defendants during the
13 Class Period, Defendants also engaged in a pattern of practice to manipulate the commission and
14 apply unlawful deductions to deny Plaintiff and the Class members full commissions earned,
15 including deductions for ordinary negligence, deductions based on misrepresentations made by
16 customers, deductions for lodging, and deductions leading to failure to pay all earned commissions
17 upon termination of employment.

18 45. Defendants also frequently unlawfully required Class members to sign a release of
19 all claims related to earned Residual Commissions in exchange for the immediate payment of a
20 portion of the Residual Commissions (usually 50%) instead of delayed payments over the eighteen
21 (18) month period.

22 46. The acts, omissions, and practices of Defendant, VIVINT, as alleged herein
23 constituted violations of Labor Code §§ 201, 202, 204 and 218.

24 47. Pursuant to § 201, 202, 204, 218, 218.5, and 218.6, as representative of the Class,
25 Plaintiff seeks to recover all earned and unpaid wages, including all penalties, reasonable costs,
26 attorneys’ fees and interest accruing from the date such wages were earned.

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THIRD CAUSE OF ACTION
(Violation of Labor Code §§ 1194 & 1197 – Unpaid Minimum Wage)
Plaintiff and the Class
Against All Defendants and DOES 1-50

48. Plaintiff hereby incorporates all previous paragraphs by this reference.

49. Labor Code § 1197 requires an employer to pay an employee no less than the minimum wage, as established by the Industrial Welfare Commission, for each hour worked.

50. Labor Code § 1194 entitles an employee receiving less than the minimum wage to recover, in a civil action, the unpaid balance of minimum wages owing, plus interest thereon, reasonable attorney's fees, and costs of suit.

51. Labor Code § 1194.2 entitles an employee receiving less than the minimum wage to recover liquidated damages in an amount equal to the unpaid minimum wages and interest thereon.

52. During the Class Period, Plaintiff and the Class members were regularly required to complete non-exempt work, such as initial training, recurring mandatory training and other work-related activities, outside of, and in addition to, regular sales and lead generation work. Plaintiff and the Class members consistently attended mandatory employee meetings and mandatory training sessions. These non-sales tasks are not exempt work and Plaintiff and the Class members were not paid minimum wage for such work.

53. All of the foregoing caused Plaintiff and the Class members to be compensated at a rate that is less than the applicable minimum wage rate in violation of California law. As a result, Plaintiff, as representative of the Class, seek to recover all earned and unpaid minimum wage, including all liquidated damages, reasonable costs, penalties, attorneys' fees and interest accruing from the date such wages were earned.

FOURTH CAUSE OF ACTION
(Violation of Labor Code §§ 203 – Waiting Time Penalties)
Plaintiff and the Class
Against All Defendants and DOES 1-50

54. Plaintiff hereby incorporates all previous paragraphs by this reference.

55. Labor Code § 201 requires an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge.

1 56. Labor Code § 202 requires an employer to pay all compensation due and owing to
2 an employee who quits within 72 hours of that employee quitting, unless the employee provides at
3 least 72 hours' notice of quitting, in which case all compensation is due at the end of the employee's
4 final day of work.

5 57. Labor Code § 203 provides that if an employer willfully fails to pay compensation
6 promptly upon discharge, as required by § 201 or § 202, then the employer is liable for waiting time
7 penalties in the form of continued compensation of up to 30 work days.

8 58. Labor Code § 227.3 provides that, unless otherwise provided by a collective
9 bargaining agreement, whenever an employment relationship ends and the employee has not used
10 all of his or her earned and accrued vacation, the employer must pay the employee at his or her final
11 rate of pay for all such earned, accrued, and unused vacation.

12 59. While Plaintiff and the Class members were employed by Defendants during the
13 Class Period, Defendants engaged in a pattern of practice of withholding payment of Plaintiff's and
14 the Class members' earned commissions at the time they were earned (or otherwise capable of
15 being calculated), and paying a portion of commissions earned either as "Back End Commissions"
16 and "Year End Commission" after the end of a seasonal sales period, or as "Residual Commissions"
17 over an eighteen (18) month period. Plaintiff's and the Class members' employment with
18 Defendants terminated prior to end of a seasonal sales period and prior to the end of the eighteen
19 (18) month period, and to date, Defendants have willfully failed to pay Plaintiff and the Class
20 members all commissions earned by them following termination, in violation of this section.

21 60. Defendants willfully failed and refused to timely pay minimum wage, overtime and
22 other compensation and wages, including earned commissions, monies unlawfully deducted from
23 compensation, and unused PTO to Plaintiff and the Class members whose employment terminated.

24 61. Defendants also unlawfully required Class members to sign releases of claims
25 related to earned Residual Commissions in exchange for immediate payout of a portion of earned
26 Residual Commissions, again denying full payment of all earned commission wages at termination
27 of employment.

28 62. As a result, Plaintiff, as representative of the Class, seek to recover statutory

1 penalties pursuant to Labor Code §§ 201-203 & 227.3, including reasonable costs, penalties,
2 attorneys' fees and interest accruing from the date such wages were earned.

3 **FIFTH CAUSE OF ACTION**
4 **(Violation of Labor Code § 226(a) – Inaccurate Itemized Wage Statements)**

5 **Plaintiff and the Class**
6 **As Against All Defendants AND DOES 1-50**

6 63. Plaintiff hereby incorporates all previous paragraphs by this reference.

7 64. Labor Code § 226(a) provides that:

8 An employer, semimonthly or at the time of each payment of wages, shall
9 furnish to his or her employee, either as a detachable part of the check, draft,
10 or voucher paying the employee's wages, or separately if wages are paid by
11 personal check or cash, an accurate itemized statement in writing showing
12 (1) gross wages earned, (2) total hours worked by the employee, except as
13 provided in subdivision (j), (3) the number of piece-rate units earned and
14 any applicable piece rate if the employee is paid on a piece-rate basis, (4)
15 all deductions, provided that all deductions made on written orders of the
16 employee may be aggregated and shown as one item, (5) net wages earned,
17 (6) the inclusive dates of the period for which the employee is paid, (7) the
18 name of the employee and only the last four digits of his or her social
19 security number or an employee identification number other than a social
20 security number, (8) the name and address of the legal entity that is the
21 employer and, if the employer is a farm labor contractor, as defined in
22 subdivision (b) of Section 1682, the name and address of the legal entity
23 that secured the services of the employer, and (9) all applicable hourly rates
24 in effect during the pay period and the corresponding number of hours
25 worked at each hourly rate by the employee and, beginning July 1, 2013, if
26 the employer is a temporary services employer as defined in Section 201.3,
27 the rate of pay and the total hours worked for each temporary services
28 assignment. The deductions made from payment of wages shall be recorded
in ink or other indelible form, properly dated, showing the month, day, and
year, and a copy of the statement and the record of the deductions shall be
kept on file by the employer for at least three years at the place of
employment or at a central location within the State of California. For
purposes of this subdivision, "copy" includes a duplicate of the itemized
statement provided to an employee or a computer-generated record that
accurately shows all of the information required by this subdivision.

25 65. During the Class Period, the wage statements provided by Defendants to Plaintiff
26 and the Class members fail to comply with the requirements of § 226(a) by failing to provide all
27 the information required by this section.

28 66. Plaintiff and the Class members have therefore suffered an injury as a result of

1 Defendants' knowing and intentional violation of § 226(a).

2 67. Plaintiff, as representative of the Class, seeks to recover the greater of all actual
3 damages or \$50.00 for the initial pay period in which a violation occurs and \$100.00 for each
4 violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000.00. Plaintiff
5 also seeks attorney fees, costs of suit, and injunctive relief in the form of an order enjoining
6 Defendants from further violations of the law.

7 **SIXTH CAUSE OF ACTION**
8 **(Violation of Bus. & Prof. Code § 17200 et seq. – California's Unfair Competition Law)**
9 **Plaintiff and the Class**
As Against All Defendants and DOES 1-50

10 68. Plaintiff hereby incorporates all previous paragraphs by this reference.

11 69. The acts, omissions, and practices of Defendants alleged herein constituted unlawful
12 and unfair business acts and practices within the meaning of § 17200 et seq. of the California
13 Business & Professions Code.

14 70. During the Class Period, Defendants engaged in "unlawful" business acts or
15 practices in that Defendants violated, *inter alia*, all prior allegations in this complaint, including §§
16 201, 202, 203, 204, 221, 224, 226(a), 227.3, 432.5, 1194, 1197, and 2802 of the California Labor
17 Code, Wage Order 7, 29 C.F.R. § 541.705, 29 C.F.R. § 785.27, 29 C.F.R. § 785.28, 29 C.F.R. §
18 785.29, California Unemployment Insurance Code §§ 650, 976, 986, 987, 1110, and 13020; by,
19 among other things, failing to indemnify from or reimburse business expenses, withholding earned
20 but unpaid wages; making unlawful deductions from wages; and imposing unlawful contractual
21 terms upon Plaintiff and the Class members.

22 71. Additionally, during the Class Period, Defendants engaged in "unlawful" business
23 acts or practices by failing to withhold and pay state income tax contributions, state unemployment
24 insurance contributions, and contributions to the state disability fund from wages and commissions
25 Defendants paid to Plaintiff and the Class members, in violation of Unemployment Insurance Code
26 §§ 650, 976, 986, 987, 1110, and 13020.

27 72. Defendants engaged in "unfair" business acts or practices in that the harm caused by
28 Defendants' actions violates the policy or spirit of laws because its effects are comparable to a

1 violation of the law and provide Defendants with an unfair competitive advantage over those
2 businesses that abide by the law. Defendants also engaged in “unfair” business acts or practices in
3 that the harm caused by Defendants’ misconduct outweighs its benefits, is immoral, unethical,
4 oppressive, unscrupulous, or substantially injurious to the public.

5 73. Pursuant to § 17203 of the Business & Professions Code, as representative of the
6 Class, Plaintiff seeks an order of this court awarding Plaintiff and the Class members full restitution
7 of all monies wrongfully acquired by Defendants by their unlawful and unfair conduct, including
8 but not limited to payroll taxes paid by Plaintiff and the Class members, so as to restore all monies
9 to Plaintiff and the Class members that were acquired and obtained by Defendants’ unlawful and
10 unfair conduct.

11 74. Pursuant to § 17203 of the Business & Professions Code, as representative of the
12 Class, Plaintiff seeks an order of the court for equitable or injunctive relief requiring Defendants to
13 take corrective actions and provide notice regarding violations of California’s Labor Code, plus
14 attorneys’ fees and costs of suit.

15 **SEVENTH CAUSE OF ACTION**
16 **(Code Civ Proc. § 1060 & Cal. Const. Art. XV § 1 - Declaratory Relief)**

17 **Plaintiff and the Class**
As Against All Defendants and DOES 1-50

18 75. Plaintiff hereby incorporates all previous paragraphs by this reference.

19 76. An actual and immediate controversy has arisen and now exists between Plaintiff
20 and the Class members, and Defendants, regarding the legality and effect of the Employment
21 Agreements, which Plaintiff and the Class members executed while employed by Defendants.
22 Plaintiff and the Class members contend that certain provisions and clauses of Plaintiff’s and the
23 Class members’ Employment Agreements with VIVINT are void and in violation of applicable
24 California laws and regulations, including Labor Code § 432.5. Plaintiff alleges that at the time of
25 hire, Defendant required as a condition of employment, that Plaintiff and the Class members to
26 agree to unlawful contractual provisions including, but not limited to:

- 27 (a) Choice of law – State of Utah;
28 (b) Choice of jurisdiction – State of Utah;

- (c) Choice of venue – State of Utah;
- (d) Non-solicitation of customers;
- (e) Non-solicitation of personnel;
- (f) Unlawful employer indemnification;
- (g) Unlawful attorney fees award to employer to compel mediation;
- (h) Unlawful forfeiture of earned but unpaid wages after termination of employment;
- (i) Unlawful repayment of costs for unused housing after termination of employment.

77. A second actual controversy has arisen and now exists between Plaintiff and the Class members, and Defendants. As described above, Plaintiff contends that Defendant's policies, practices, guidelines and/or procedures by which door-to-door employees like Plaintiff and the Class members are compensated, reimbursed, and provided wage statements, is inconsistent with and in violation of the laws and regulations of the State of California.

78. A third actual controversy has arisen and now exists between Plaintiff and the Class members, and Defendants. Plaintiff contends that Defendants maintain a policy, practice, guideline and/or procedure by which door-to-door employees are only paid a portion of earned commissions at the time such commissions are earned. Plaintiff further asserts that VIVINT failed to pay the remainder of earned commissions during the proscribed pay period and instead paid the remainder of wages to door-to-door employees as a "Back End Commissions" or "Year End Commissions" or "Residual commissions." Plaintiff further contends that such commissions are unlawfully retained by Defendants upon termination of door-to-door employees' employment, as such commission wages have already been earned where no other action is required on the part of the employee to complete the sale leading to the commission payment. (See, *Schacter v. Citigroup, Inc.*, (2009) 47 Cal.4th 610, 622).

79. A fourth actual controversy has arisen and now exists between Plaintiff and the Class members, and Defendants. While Plaintiff and the Class members were employed by Defendants during the Class Period, Defendants unlawfully engaged in a pattern of practice to manipulate the commission and apply unlawful deductions to deny Plaintiff and the Class members full

1 commissions earned, including deductions for ordinary negligence, deductions based on
2 misrepresentations made by customers, deductions for lodging, and deductions leading to failure to
3 pay all earned commissions upon termination of employment.

4 80. A fifth actual controversy has arisen and now exists between Plaintiff and the Class
5 members, and Defendants. Plaintiff contends that provisions of Plaintiff's and the Class members'
6 wage Advance Agreements include unlawful choice of law, jurisdiction, and venue provisions for
7 the State of Utah, and unlawful judgement by confession provisions.

8 81. A Sixth actual controversy has arisen and now exists between Plaintiff and the Class
9 members, and Defendants. Plaintiff contends that Defendants unlawfully fail to provide paid sick
10 leave to Plaintiff and the Class members in violation of Labor Code § 246.

11 82. A judicial determination of these issues and of the respective duties of Plaintiff and
12 the Class members, and Defendants, is necessary and appropriate at this time under the
13 circumstances.

14 83. Plaintiff seeks declaratory relief pursuant to Code Civ. Proc § 1060 regarding his
15 obligations, and those of the Class members, under the above listed provisions of the Employment
16 Agreements and wage Advance Agreements.

17 84. Plaintiff seeks an order of the court for equitable or injunctive relief requiring
18 Defendants to take corrective actions, cease all future enforcement of the above listed provisions,
19 policies, practices, and procedures, and provide notice regarding violations of California's Labor
20 Code, plus attorneys' fees and costs of suit.

21 **EIGHTH CAUSE OF ACTION**
22 **(Recovery of Penalties Under the Labor Code Private Attorneys General Act)**
23 **Plaintiff and The Class**
As Against All Defendants and DOES 1-50

24 85. Plaintiff hereby incorporates all previous paragraphs by this reference.

25 86. Plaintiff brings this representative claim on behalf of himself and all other aggrieved
26 employees of Defendants under the Labor Code Private Attorneys General Act of 2004, as codified
27 in Labor Code §§ 2698, et seq. ("PAGA") to recover unpaid wages, expenses, and statutory
28 penalties. Defendants are "persons" as contemplated within the meaning of subd. (b) of § 2699 of

1 the Labor Code. Plaintiff is an “aggrieved employee” of Defendants as contemplated within the
2 meaning of subd. (c) of § 2699 of the Labor Code.

3 **A. VIVINT Failed to Indemnify or Reimburse Employees for Work Expenses in Violation**
4 **of Labor Code § 2800, 2802, and IWC Wage Order No. 7-2001.**

5 87. Labor Code § 2800 provides that “[a]n employer shall in all cases indemnify his
6 employee for losses caused by the employer’s want of ordinary care.”

7 88. Labor Code § 2802(a) provides that “[a]n employer shall indemnify his or her
8 employee for all necessary expenditures or losses incurred by the employee in direct consequence
9 of the discharge of his or her duties.”

10 89. While Plaintiff and all similarly situated aggrieved employees were employed by
11 VIVINT, VIVINT failed to pay its portion of payroll taxes and required Plaintiff and other similarly
12 situated aggrieved employees to pay all payroll expenses incurred as a direct consequence of their
13 employment duties, including 100% of all state income tax contributions, state unemployment
14 insurance contributions, contributions to the state disability fund.

15 90. Also, while Plaintiff and all similarly situated aggrieved employees were employed
16 by VIVINT, VIVINT required door-to-door employees to purchase and/or use their own personal
17 cell phone, I-Pad or other tablet, maintain a data plan for the use of each, and travel to and from
18 work locations via their personal vehicles. VIVINT failed to reimburse or indemnify Plaintiff and
19 all similarly situated aggrieved employees for any or all of these necessary business expenses in
20 violation of § 2802.

21 Labor Code § 2802 provides that an employer who violates § 2802 is liable for all necessary
22 expenditures or losses, including reasonable attorneys’ fees and costs, and interest accruing from
23 the date of expenditure or loss. Additionally, pursuant to § 1197.1, any employer who violates §
24 2802 is also subject to a civil penalty of \$100.00 for each aggrieved employee per pay period for
25 each intentional violation and \$250.00 for each subsequent violation, either intentional or
26 unintentional.

27 **B. VIVINT Failed to Pay Minimum Wages and Overtime Compensation in Violation of**
28 **Labor Code §§ 204, 210, 218.6, 226.2, 510, 558, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198,**
and 1199.

1 91. Labor Code § 204 provides that:

2 “All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2,
3 earned by any person in any employment are due and payable twice during
4 each calendar month, on days designated in advance by the employer as the
5 regular paydays. Labor performed between the 1st and 15th days, inclusive,
6 of any calendar month shall be paid for between the 16th and the 26th day of
7 the month during which the labor was performed, and labor performed
8 between the 16th and the last day, inclusive, of any calendar month, shall be
9 paid for between the 1st and 10th day of the following month. However,
10 salaries of executive, administrative, and professional employees of
11 employers covered by the Fair Labor Standards Act, as set forth pursuant to §
12 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969,
13 in Part 541 of Title 29 of the Code of Federal Regulations, as that part now
14 reads or may be amended to read at any time hereafter, may be paid once a
15 month on or before the 26th day of the month during which the labor was
16 performed if the entire month’s salaries, including the unearned portion
17 between the date of payment and the last day of the month, are paid at that
18 time.(b) (1) Notwithstanding any other provision of this section, all wages
19 earned for labor in excess of the normal work period shall be paid no later than
20 the payday for the next regular payroll period. (2) An employer is in
21 compliance with the requirements of subd. (a) of § 226 relating to total hours
22 worked by the employee, if hours worked in excess of the normal work period
23 during the current pay period are itemized as corrections on the paystub for
24 the next regular pay period. Any corrections set out in a subsequently issued
25 paystub shall state the inclusive dates of the pay period for which the employer
26 is correcting its initial report of hours worked. (c) However, when employees
27 are covered by a collective bargaining agreement that provides different pay
28 arrangements, those arrangements shall apply to the covered employees. (d)
 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.”

20 92. Labor Code § 1197 states:

21 “The minimum wage for employees fixed by the commission or by any applicable
22 state or local law, is the minimum wage to be paid to employees, and the payment
23 of a lower wage than the minimum so fixed is unlawful.”

23 93. Labor Code § 1198 states:

24 “The maximum hours of work and the standard conditions of labor fixed by the
25 commission shall be the maximum hours of work and the standard conditions of
26 labor for employees. The employment of any employee for longer hours than those
27 fixed by the order or under conditions of labor prohibited by the order is
28 unlawful.”

27 94. Labor Code § 510 states:

28 “Any work in excess of eight hours in one workday and any work in excess of 40
 hours in any one workweek and the first eight hours worked on the seventh day of

1 work in any one workweek shall be compensated at the rate of no less than one and
2 one-half times the regular rate of pay for an employee.”

3 95. Labor Code § 226.2 states, in relevant part:

4 “(a) For employees compensated on a piece-rate basis during a pay period, the
5 following shall apply for that pay period: (1) Employees shall be compensated
6 for rest and recovery periods and other nonproductive time separate from any
piece-rate compensation.”

7 96. Employees paid on a commission basis are similarly entitled to separate
8 compensation for rest periods. (*See, Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th
9 98, 110-13).

10 97. While Plaintiff and all similarly situated aggrieved employees were employed by
11 VIVINT, VIVINT failed to timely pay Plaintiff and all similarly situated aggrieved employees, in
12 accordance with the provisions of Labor Code § 204, frequently paying earned wages significantly
13 later than the proscribed time period.

14 98. Also, while employed by VIVINT, Plaintiff and all similarly situated aggrieved
15 employees, regularly worked, and were regularly required to work, more than eight hours per day
16 and/or forty hours a week, without receiving overtime compensation. Plaintiff also alleges that he,
17 and all similarly situated aggrieved employees, were required to attend uncompensated meetings
18 and trainings, both in-person and online. Plaintiff further alleges that door-to-door employees are
19 paid on a commission basis, yet, VIVINT failed to separately pay door-to-door employees,
20 including Plaintiff and other current or former door-to-door employees, for training and other non-
21 productive time worked, including any time spent on rest breaks. All of the foregoing caused
22 Plaintiff and other current or former door-to-door employees to be compensated at a rate that is less
23 than the applicable minimum wage and/or overtime rate in violation of California Law.

24 99. Plaintiff also alleges that VIVINT has a policy, practice, guideline and/or procedure
25 by which door-to-door employees are only paid a portion of earned commissions at the time such
26 commissions are earned. Plaintiff further asserts that VIVINT failed to pay the remainder of earned
27 commissions during the proscribed pay period and instead paid the remainder of wages to door-to-
28 door employees as a “Back End Commissions” or “Year End Commissions” or “Residual

1 Commissions.” Because commissions constitute wages under California law, VIVINT as a policy,
2 practice, guideline and/or procedure fails to timely pay earned wages due to Plaintiff and all
3 similarly situated aggrieved employees in violation of California law.

4 100. Labor Code § 1194 provides that:

5 “(a) Notwithstanding any agreement to work for a lesser wage, any employee
6 receiving less than the legal minimum wage or the legal overtime compensation
7 applicable to the employee is entitled to recover in a civil action the unpaid
8 balance of the full amount of this minimum wage or overtime compensation,
9 including interest thereon, reasonable attorney's fees, and costs of suit.”

10 101. Labor Code § 1194.2(a) provides, in relevant part:

11 “In any action under Section...1194...to recover wages because of the payment of
12 a wage less than the minimum wage fixed by an order of the commission or by
13 statute, an employee shall be entitled to recover liquidated damages in an amount
14 equal to the wages unlawfully unpaid and interest thereon. Nothing in this
15 subdivision shall be construed to authorize the recovery of liquidated damages for
16 failure to pay overtime compensation. A suit may be filed for liquidated damages
17 at any time before the expiration of the statute of limitations on an action for wages
18 from which the liquidated damages arise.”

19 102. Labor Code § 1194.5 provides:

20 “In any case in which a person employing an employee has willfully violated any
21 of the laws, regulations, or orders governing the wages, hours of work, or working
22 conditions of such employee, the division may seek, in a court of competent
23 jurisdiction, and the court may grant, an injunction against any further violations of
24 any such laws, regulations, or orders by such person.”

25 103. Labor Code § 1197.1 provides that:

26 “(a) Any employer or other person acting either individually or as an officer, agent,
27 or employee of another person, who pays or causes to be paid to any employee a
28 wage less than the minimum fixed by an applicable state or local law, or by an
order of the commission shall be subject to a civil penalty, restitution of wages,
liquidated damages payable to the employee, and any applicable penalties imposed
pursuant to Section 203.” See also IWC Wage Order No. 7-2001, item 4.

104. Labor Code § 210 provides, in relevant part:

“(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.”

105. Labor Code § 218.6 provides:

“In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.”

106. Labor Code § 218.5 provides, in relevant part:

“(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action.”

107. Labor Code § 1199 provides that:

“Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

108. Labor Code § 558 provides, in relevant part:

“(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

C. **VIVINT failed to Pay Wages Owed Upon Termination of Employment in Violation of Labor code §§ 201, 202, 203, 210 & 227.3.**

109. Labor Code § 201 states, in relevant part:

“(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

110. Labor Code § 202 states, in relevant part:

1 “(a) If an employee not having a written contract for a definite period quits his
2 or her employment, his or her wages shall become due and payable not later
3 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.”

4 111. Labor Code §227.3 states, in relevant part:

5 “[W]henever a contract of employment or employer policy provides for paid
6 vacations, and an employee is terminated without having taken off his vested
7 vacation time, all vested vacation shall be paid to him as wages at his final rate
in accordance with such contract of employment or employer policy
respecting eligibility or time served...”

8 112. While Plaintiff was employed by VIVINT, VIVINT willfully failed to timely pay
9 Plaintiff and all other similarly situated aggrieved employees for all earned wages, commissions,
10 and accrued PTO due to them upon termination of their employment with VIVINT, in violation of
11 this section. Plaintiff and all other similarly situated aggrieved employees have therefore been
12 deprived of all earned wages and commissions, in violation of this section.

13 113. Labor Code § 203 provides that:

14 “(a) If an employer willfully fails to pay, without abatement or reduction, in
15 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages
16 of an employee who is discharged or who quits, the wages of the employee
17 shall continue as a penalty from the due date thereof at the same rate until paid
18 or until an action therefor is commenced; but the wages shall not continue for
19 more than 30 days. An employee who secretes or absents himself or herself to
avoid payment to him or her, or who refuses to receive the payment when fully
tendered to him 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.”

20 114. Labor Code § 210 provides, in relevant part:

21 “(a) In addition to, and entirely independent and apart from, any other penalty
22 provided in this article, every person who fails to pay the wages of each employee
23 as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5,
24 shall be subject to a civil penalty as follows: (1) For any initial violation, one
25 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.”

26 115. Labor Code § 218.5 provides, in relevant part:

27 “(a) In any action brought for the nonpayment of wages, fringe benefits, or health
28 and welfare or pension fund contributions, the court shall award reasonable attorney's
fees and costs to the prevailing party if any party to the action requests attorney's fees

and costs upon the initiation of the action.”

116. Labor Code § 218.6 provides:

“In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.”

D. VIVINT Unlawfully Deducted Wages in Violation of Labor Code §§ 221, 225, & 225.5

117. Labor Code § 221 states:

“It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

118. As stated above, Plaintiff alleges that VIVINT has a policy, practice, guideline and/or procedure by which door-to-door employees are only paid a portion of earned commissions at the time such commissions are earned and paid the remainder of these commission wages to door-to-door employees as a “Back End Commissions” or “Year End Commissions” or “Residual Commissions.” Plaintiff alleges that VIVINT unlawfully withheld the remaining balance of these wages upon termination of door-to-door employees in violation of Labor Code § 221. Plaintiff further alleges that VIVINT unlawfully made deductions from wages for lodging, for ordinary negligence, and mistakes made during verification calls with customers.

119. Labor Code § 225 provides that “[t]he violation of any provision of Sections 221, 222, 222.5, or 223 is a misdemeanor.”

120. Labor Code § 225.5 provides, in relevant part:

“In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (b) 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.”

E. VIVINT Failed to Timely Furnish Legally Compliant Wage Statements in Violation of Labor Code §§ 226, 226.2, 226.3, and IWC Wage Order No. 7-2001.

121. Labor Code § 226(a) states, in relevant part:

“Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when 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...(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...(7) the name of the employee and only the last four digits of his or her social security number...(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...The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California...”

122. The wage statements provided by VIVINT to Plaintiff, and all similarly situated aggrieved employees, fail to comply with the requirements of §§ 226(a) and 226.2 by failing to provide all the information required by this section. The missing information required by §§ 226(a) and 226.2 includes, but is not limited to, the total hours worked, the beginning and/or ending dates of the pay period, name and address of the legal entity that is the employer, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, the overtime rate of pay, all deductions, and an itemization, accounting, or other explanation of how the commission is calculated.

123. Labor Code § 226.3 provides:

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

F. **VIVINT Knowingly Required Door-to-Door Employees to Execute Unlawful Contractual Provisions in violation of Labor Code § 432.5**

124. Labor Code § 432.5 states:

“No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to

1 any term or condition which is known by such employer, or agent, manager,
2 superintendent, or officer thereof to be prohibited by law.”

3 125. Upon information and belief, while Plaintiff was employed by VIVINT, VIVINT
4 required Plaintiff, and all similarly situated aggrieved employees, to execute one or more written
5 agreements regarding, *inter alia*, non-competition, non-solicitation, choice of law, choice of venue,
6 employee indemnification, and mutual attorney’s fees, all of which are prohibited by California
7 law.

8 126. Labor Code § 432.5 does not specify a specific remedy for a violation. However,
9 for Labor Code violations for which no civil penalty is specified, a civil penalty of \$100 for each
10 aggrieved employee per pay period for the initial violation and \$200 for each subsequent violation.
11 (Labor Code § 2699(f)(2)).

12 **G. VIVINT Failed to Maintain Sufficient Employment Records in Violation of Labor**
13 **Code §§ 1174 & 1174.5**

14 127. Labor Code § 1174 states, in relevant part:

15 “Every person employing labor in this state shall...(c) Keep a record showing the
16 names and addresses of all employees employed...(d) Keep, at a central location in
17 the state or at the plants or establishments at which employees are employed,
18 payroll records showing the hours worked daily by and the wages paid to, and the
19 number of piece-rate units earned by and any applicable piece rate paid to,
20 employees employed at the respective plants or establishments. These records shall
21 be kept in accordance with rules established for this purpose by the commission,
22 but in any case shall be kept on file for not less than three years. An employer shall
23 not prohibit an employee from maintaining a personal record of hours worked, or,
24 if paid on a piece-rate basis, piece-rate units earned.”

21 128. Plaintiff alleges that, while employed by VIVINT, VIVINT failed to keep and
22 maintain employment records in accordance with the location and temporal provisions of Labor
23 Code § 1174.

24 129. Labor Code § 1174.5 provides:

25 “Any person employing labor who willfully fails to maintain the records required
26 by subdivision (c) of Section 1174 or accurate and complete records required by
27 subdivision (d) of Section 1174, or to allow any member of the commission or
28 employees of the division to inspect records pursuant to subdivision (b) of Section
1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

1 **H. VIVINT Failed to Provide Written Commission Agreements in Violation of Labor**
2 **Code § 2751**

3 130. Labor Code § 2751 states, in relevant part:

4 “(a) Whenever an employer enters into a contract of employment with an
5 employee for services to be rendered within this state and the contemplated
6 method of payment of the employee involves commissions, the contract shall
7 be in writing and shall set forth the method by which the commissions shall
8 be computed and paid. (b) The employer shall give a signed copy of the
9 contract to every employee who is a party thereto and shall obtain a signed
10 receipt for the contract from each employee. In the case of a contract that
11 expires and where the parties nevertheless continue to work under the terms
12 of the expired contract, the contract terms are presumed to remain in full
13 force and effect until the contract is superseded or employment is terminated
14 by either party.”

15 131. Plaintiff alleges that, while employed by VIVINT, Plaintiff, and all similarly
16 situated aggrieved employees, who were paid on a commission basis, were not provided with a
17 written contract properly outlining the current method by which VIVINT calculated and/or paid
18 commissions to door-to-door employees.

19 132. Labor Code § 2751 does not specify a specific remedy for a violation. However, for
20 Labor Code violations for which no civil penalty is specified, a civil penalty of \$100 for each
21 aggrieved employee per pay period for the initial violation and \$200 for each subsequent violation.
22 (Labor Code § 2699(f)(2)).

23 **I. VIVINT Employed License Required Workers Without a Valid State Contractors**
24 **License in Violation of Labor Code §§ 1021 and 1021.5**

25 133. Labor Code § 1021 states:

26 “Any person who does not hold a valid state contractor's license issued pursuant to
27 Chapter 9 (commencing with Section 7000) of Division 3 of the Business and
28 Professions Code, and who employs any worker to perform services for which a
29 license is required, shall be subject to a civil penalty in the amount of two hundred
30 dollars (\$200) per employee for each day of employment. The civil penalties
31 provided for by this section are in addition to any other penalty provided by law.”

32 134. Labor Code § 1021.5 states:

33 “Any person who holds a valid state contractor's license issued pursuant to Chapter
34 9 (commencing with Section 7000) of Division 3 of the Business and Professions
35 Code, and who willingly and knowingly enters into a contract with any person to

1 perform services for which a license is required as an independent contractor, and
2 that person does not meet the burden of proof of independent contractor status
3 pursuant to Section 2750.5 or hold a valid state contractor's license, shall be subject
4 to a civil penalty in the amount of two hundred dollars (\$200) per person so
contracted with for each day of the contract. The civil penalties provided for by this
section are in addition to any other penalty provided by law.”

5 135. On information and belief, while Plaintiff was employed by VIVINT, VIVINT or
6 its constituent entities did not hold a valid California Contractor’s State License, which is needed
7 to employ HIS Licensed employees. Similarly, an HIS License is needed to solicit or sell residential
8 solar systems in California pursuant to Bus. & Prof. Code §7152 et seq., and VIVINT employed
9 door-to-door employees to solicit and/or perform sales of solar systems that did not hold the
10 required HIS Licenses.

11 **J. Plaintiff Has Complied with PAGA Notice Requirements**

12 136. Plaintiff has complied with the PAGA administrative requirements in the manner
13 prescribed in Labor Code § 2699.3, including providing notice as set forth in Labor Code §
14 2699.3(a)(1). More than 65 calendar days have elapsed since the postmark date of Plaintiff’s
15 notice, as required under Labor Code § 2699(a)(2)(A). A true and correct copy of Plaintiff’s
16 PAGA notice dated June 9, 2020, is attached hereto as Exhibit “A.”

17 **PRAYER FOR RELIEF**

18 WHEREFORE Plaintiff requests the following relief on all causes of action:

19 A. That the Court determines that this action may be maintained as a class action under
20 Code of Civil Procedure § 382;

21 B. That the Court finds that Defendants violated §§ 201, 202, 203, 204, 210, 218.6,
22 221, 225, 225.5, 226, 226.2, 226.3, 227.3, 246, 432.5, 510, 558, 1021, 1021.5, 1174, 1174.5, 1194,
23 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2751, 2800, & 2802 of the California Labor Code, Wage
24 Order 7, 29 C.F.R. § 541.705, 29 C.F.R. § 785.27, 29 C.F.R. § 785.28, 29 C.F.R. § 785.29,
25 California Unemployment Insurance Code §§ 650, 976, 986, 987, 1110, and 13020, § 17200 of the
26 California Bus. & Prof. Code, and the applicable IWC Orders, as set forth above;
27
28

1 C. That the Court award to Plaintiff, and each member of the Class, pursuant to § 2802,
2 all necessary expenditures or losses incurred by them, including all reasonable costs, attorneys' fees
3 and interest accruing from the date of expenditure or loss;

4 D. That the Court award to Plaintiff, and each member of the Class, all earned, unpaid
5 wages;

6 E. That the Court award to Plaintiff, and each member of the Class, statutory penalties
7 pursuant to Labor Code §§ 201-203;

8 F. That the Court award to Plaintiff, and each member of the Class, pursuant to § 226(e)
9 the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and
10 \$100.00 for each violation in a subsequent pay period, not exceeding an aggregate penalty of
11 \$4,000.00, as well as attorney fees, costs of suit, and injunctive relief in the form of an order
12 enjoining Defendants from further violations of the law;

13 G. That the Court award to Plaintiff, and each member of the Class, pursuant to Bus. &
14 Prof. Code §§ 17200 et seq. the full restitution of all monies wrongfully acquired by Defendants by
15 their unlawful and unfair conduct, so as to restore all monies to Plaintiff and the Class that were
16 acquired and obtained by means of such unlawful and unfair conduct;

17 H. That the Court award to Plaintiff and each member of the Class, civil penalties equal
18 to \$100.00 for the initial violation and \$200.00 for each subsequent violation of Labor Code §
19 226(a), pursuant to Labor Code § 2699(f)(2);

20 I. That the Court award to Plaintiff and each member of the Class, civil penalties equal
21 to \$100.00 for each aggrieved employee per pay period for each intentional violation and \$250.00
22 for each subsequent violation, either intentional or unintentional, pursuant to Labor Code § 1197.1;

23 J. That the Court award to Plaintiff each member of the Class, civil penalties equal to
24 \$100.00 for any initial violation for each unpaid employee and \$200.00 for any subsequent violation
25 for each unpaid employee, plus 25% of the amount unlawfully withheld, plus attorneys' fees, costs
26 and interest due thereon, pursuant to Labor Code §§ 210, 3289(b), 218.5, and 218.6;

1 K. That the Court award to Plaintiff and each member of the Class, civil penalties equal
2 to \$100.00 for any initial violation and \$200.00 for each subsequent violation of Labor Code §
3 432.5, pursuant to Labor Code § 2699(f)(2);

4 L. That the Court award to Plaintiff and each member of the Class, civil penalties equal
5 to \$500.00, pursuant to Labor Code § 1174;

6 M. That the Court award to Plaintiff and each member of the Class, civil penalties in
7 the form of unpaid wages and unpaid expenses;

8 N. That the Court order equitable or injunctive relief requiring Defendants to take
9 corrective actions and provide notice regarding violations of California's Labor Code;

10 O. That the Court order equitable or injunctive relief requiring Defendants to take
11 corrective actions and enact a policy to provide paid sick leave as required by, and in accordance
12 with, California Labor Code § 246;

13 P. That Defendants be enjoined from enforcing unlawful contractual provisions;

14 Q. That Defendants further be enjoined to cease and desist from unlawful activities;

15 R. That Plaintiff, and each member of the Class, be awarded reasonable attorneys' fees
16 and costs pursuant to Code of Civil Procedure § 1021.5 and the Labor Code alleged above;

17 S. That Plaintiff recover, for themselves and the Class and all aggrieved employees, all
18 earned and unpaid minimum wage, expenses, including all liquidated damages, reasonable costs,
19 penalties, attorneys' fees and interest accruing from the date such wages were earned;

20 T. Such other and further relief as the Court may deem appropriate.
21
22

23 **KEEGAN & BAKER, LLP**

24 Dated: September 15, 2020

By: /s/ Jason E. Baker

Jason E. Baker, Esq.

John J. Weber, Esq.

Attorneys for LOGAN SHANE CRABTREE,
individually, on behalf of the Class, and all similarly
situated aggrieved employees

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

KEEGAN & BAKER, LLP

Dated: September 15, 2020	By: <u>/s/ Jason E. Baker</u> Jason E. Baker, Esq. John J. Weber, Esq. Attorneys for LOGAN SHANE CRABTREE, individually, on behalf of the Class, and all similarly situated aggrieved employees
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EXHIBIT A



6255 Lusk Blvd, Ste. 140, San Diego, CA 92121

Main: 858.558.9400 | Direct: 858.558.9407 | Facsimile: 858.558.9401 | Email: jweber@keeganbaker.com

June 9, 2020

Via Electronic Submission

California Labor &
Workplace Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

Via Certified Mail, Return Receipt Requested

Vivint, Inc.,
4931 N 300 W
Provo, UT 84604

Vivint Smart Home, Inc.,
4931 N 300 W
Provo, UT 84604

Smart Home Pros, Inc.,
491 S 1325 W #3-4
Orem, UT 84058

Arm Security, Inc.,
4931 N 300 W
Provo, UT 84604

CT Corporation System, Agent for Service
of Process for Vivint, Inc., & Smart Home Pros, Inc.,
818 W. Seventh Street, Ste 930
Los Angeles, CA 90017

Notice Under Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.)

Dear Sir or Madam:

This firm represents Logan Shane Crabtree (hereinafter, "Claimant"). This letter is sent pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.) as a prerequisite to bringing an action to enforce the California labor laws described below and to recover wages, expenses and penalties thereunder.

I. STATEMENT OF FACTS.

A. Defendants

Defendant VIVINT, INC., (“Vivint, Inc.”), is a corporation organized and existing under the laws of the State of Utah which lawfully or unlawfully does business in California as “Vivint, Inc.” Vivint, Inc., is a home security and solar power system contractor and during all relevant times held California Contractor’s State License Number 874794 and Bureau of Security and Investigative Services License Number 6286.

Vivint, Inc.’s principal place of business in the State of California is located at 585 N Commonwealth Ave, Fullerton, California 92831. Vivint, Inc., maintains multiple offices in the State of California.

Vivint, Inc., is a home security and solar power system contractors in the State of California that sells and installs residential security and solar power systems to California residents. As such, Vivint, Inc., is an “alarm company operator” as defined by Business and Professions Code § 7599.2 et seq. Vivint, Inc., is also a “contractor” as defined by Business and Professions Code § 7150.1 and more specifically, a “home improvement contractor” as defined in Business and Professions Code § 7150.1. § 7150.1.

Defendant VIVINT SMART HOME, INC., (“Vivint Smart Home”), is a corporation organized and existing under the laws of the State of Delaware which lawfully or unlawfully does business in California as “Vivint Smart Home.” Although Vivint Smart Home purportedly conducts sales and installation of home security and solar power systems in the State of California, Vivint Smart Home is not licensed by the California Contractor’s State License Board or the Bureau of Security and Investigative Services.

Vivint Smart Home’s principal place of business in the State of California is located at 585 N Commonwealth Ave, Fullerton, California 92831. Vivint Smart Home maintains multiple offices in the State of California.

Vivint Smart Home is a home security and solar power system contractors in the State of California that sells and installs residential security and solar power systems to California residents. As such, Vivint Smart Home is an “alarm company operator” as defined by Business and Professions Code § 7599.2 et seq. Vivint, Inc., is also a “contractor” as defined by Business and Professions Code § 7150.1 and more specifically, a “home improvement contractor” as defined in Business and Professions Code § 7150.1. § 7150.1.

Defendant SMART HOME PROS, INC., (“Smart Home Pros”), is a corporation organized and existing under the laws of the State of Utah which lawfully or unlawfully does business in California as “Smart Home Pros.” Smart Home Pros is a home security and solar power system contractor and during all relevant times held California Contractor’s State License Number 993939 and Bureau of Security and Investigative Services License Number 7019.

Smart Home Pros’ principal place of business in the State of California is located at 585 N Commonwealth Ave, Fullerton, California 92831. Smart Home Pros maintains multiple offices in the State of California.

Smart Home Pros is a home security and solar power system contractors in the State of California that sells and installs residential security and solar power systems to California residents. As such, Smart Home Pros, is an “alarm company operator” as defined by Business and Professions Code § 7599.2 et seq. Vivint, Inc., is also a “contractor” as defined by Business and Professions Code § 7150.1 and more specifically, a “home improvement contractor” as defined in Business and Professions Code § 7150.1. § 7150.1.

Defendant ARM SECURITY, INC., (“Arm Security”) is a corporation organized and existing under the laws of a state unknown, which lawfully or unlawfully does business in California as “Arm Security.” Arm Security is a home security and solar power systems contractor and during all relevant times held California Contractors State License Number 993939 and Bureau of Security and Investigative Services License Number 7019.

Arm Security’s principal place of business in the State of California is located at 585 N Commonwealth Ave, Fullerton, California 92831. Claimant is informed and believes Arm Security maintains multiple offices in the State of California.

Arm Security is a home security and solar power system contractors in the State of California that sells and installs residential security and solar power systems to California residents. As such, Arm Security is an “alarm company operator” as defined by Business and Professions Code § 7599.2 et seq. Vivint, Inc., is also a “contractor” as defined by Business and Professions Code § 7150.1 and more specifically, a “home improvement contractor” as defined in Business and Professions Code § 7150.1. § 7150.1.

Defendants VIVINT, INC., VIVINT SMART HOME, INC., SMART HOME PROS, INC., and ARM SECURITY, INC., are hereinafter collectively referred to as VIVINT.

B. Claimant and Other Similarly Situated Aggrieved Employees

Claimant is an adult resident of the State of California. Claimant, and other similarly aggrieved employees, were employed by VIVINT as a door-to-door employee during the twelve (12) months preceding this notice in the State of California. As a door-to-door employee, Claimant and other current or former door-to-door employees were required to obtain a home improvement salesperson license as defined by California Business and Professions Code § 7150.1(the “HIS License”), for some of the activities performed in the course of their employment.

Claimant and other current or former door-to-door employees were also required by California law to obtain an “alarm agent” license (also called “alarm company employee license”) issued by the Bureau of Security and Investigative Services as defined by Business and Professions Code § 7599.2 et seq. (the “BSIS License”), for some of the activities performed in the course of their employment.

C. Allegations & Claims Under PAGA

While Claimant was employed by VIVINT, VIVINT failed to reimburse Claimant and other similarly situated aggrieved employees for work expenses incurred in direct consequence of the discharge of their duties in violation of Labor Code § 2800, 2802, and IWC Wage Order No. 7-2001.

While Claimant was employed by VIVINT, VIVINT failed to pay Claimant, and other similarly situated aggrieved employees, minimum wages and overtime compensation in violation of Labor Code §§ 204, 210, 218.6, 226.2, 510, 558, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and 1199.

While Claimant was employed by VIVINT, VIVINT willfully failed to pay Claimant, and other similarly situated aggrieved employees, wages owed upon termination in violation of Labor Code §§ 201, 202, 203 & 210.

While Claimant was employed by VIVINT, VIVINT unlawfully deducted wages from Claimant, and other similarly situated aggrieved employees, in violation of Labor Code § 221, 225, & 225.5.

While Claimant was employed by VIVINT, VIVINT failed to timely furnish to Claimant, and other similarly situated aggrieved employees, legally compliant wage statements in violation of Labor Code §§ 226, 226.2, 226.3, and IWC Wage Order No. 7-2001.

While Claimant was employed by VIVINT, VIVINT knowingly required Claimant, and other similarly situated aggrieved employees, to execute unlawful contractual provisions in violation of Labor Code § 432.5.

While Claimant was employed by VIVINT, VIVINT failed to maintain records reflecting the employment information for Claimant and other similarly situated aggrieved employees, for at least three (3) years, as required by California Labor Code § 1174.5.

While Claimant was employed by VIVINT, VIVINT failed to provide Claimant, and other similarly situated aggrieved employees, written commission agreements in violation of Labor Code § 2751.

While Claimant was employed by VIVINT, VIVINT and/or its constituent companies employed HIS License required workers without a valid state contractors license in violation of Labor Code §§ 1021 and 1021.5.

II. LEGAL THEORY OF RECOVERY.

A. VIVINT Failed to Indemnify or Reimburse Employees for Work Expenses in Violation of Labor Code § 2800, 2802, and IWC Wage Order No. 7-2001.

Labor Code § 2800 states:

“An employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

Labor Code § 2802(a) states, in relevant part:

“(a) 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....”

While Claimant was employed by VIVINT, VIVINT failed to pay its portion of payroll taxes and required Claimant and other similarly situated aggrieved employees to pay all payroll expenses incurred as a direct consequence of their employment duties, including 100% of all state income tax contributions, state unemployment insurance contributions, contributions to the state disability fund, and all business expenses such as personal cell phone and vehicle usage, in violation of this section.

Also, while Claimant was employed by VIVINT, it required Employees to purchase and/or use their own personal cell phone, I-Pad or other tablet, maintain a data plan for the use of each, and travel to and from work locations via their personal vehicle. VIVINT failed to reimburse or indemnify Claimant and all similarly situated aggrieved employees for any or all of these necessary business expenses in violation of § 2802.

Labor Code § 2802(c) provides that:

“For 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 enforcing the rights granted by this section.” Also, pursuant to §1197.1, any employer who violates § 2802 is also subject to a civil penalty of \$100 for each aggrieved employee per pay period for each intentional initial violation and \$250 for each subsequent violation, either intentional or unintentional, plus the unlawfully withheld expenses.

B. VIVINT Failed to Pay Minimum Wages and Overtime Compensation in Violation of Labor Code §§ 204, 210, 218.6, 226.2, 510, 558, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and 1199.

Labor Code § 204 states, in relevant part:

“(a) All wages, other than those mentioned in §§ 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month...

...(b)(1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

Labor Code § 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 lower wage than the minimum so fixed is unlawful.”

Labor Code § 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.”

Labor Code § 510 states:

“Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

Labor Code § 226.2 states, in relevant part:

“(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

(1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.”

Employees paid on a commission basis are similarly entitled to separate compensation for rest periods. *See, Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 110-13.

While Claimant was employed by VIVINT, VIVINT failed to timely pay Claimant, and other current or former door-to-door employees, in accordance with the provisions of Labor Code § 204, frequently paying earned wages significantly later than the proscribed time period.

Also, while employed by VIVINT, Claimant, and other current or former door-to-door employees, regularly worked, and were regularly required to work more than eight hours per day and/or forty hours a week, without receiving overtime compensation. Claimant also alleges that he, and other current or former door-to-door employees, were required to attend uncompensated meetings, referred to as “Correlations,” and trainings, both in-person and online. Claimant further alleges that door-to-door employees are paid on a commission basis, yet, VIVINT failed to separately pay door-to-door employees, including Claimant and other current or former door-to-door employees, for training and other non-productive time worked, including any time spent on rest breaks. All of the foregoing caused Claimant and other current or former door-to-door employees to be compensated at a rate that is less than the applicable minimum wage and/or overtime rate in violation of California Law.

Claimant also alleges that VIVINT has a policy, practice, guideline and/or procedure by which door-to-door employees are only paid a portion of earned commissions at the time such commissions are earned. Claimant further asserts that VIVINT failed to pay the remainder of earned commissions during the proscribed pay period and instead paid the remainder of wages to door-to-door employees as a “back-end” or “residual” commission. Because commissions constitute wages under California law, VIVINT as a policy, practice, guideline and/or procedure fails to timely pay earned wages due to door-to-door employees in violation of California law.

Labor Code § 1194 provides that:

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

Labor Code § 1194.2(a) provides, in relevant part:

“In any action under Section...1194...to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise.”

Labor Code § 1194.5 provides:

“In any case in which a person employing an employee has willfully violated any of the laws, regulations, or orders governing the wages, hours of work, or working conditions of such employee, the division may seek, in a court of competent jurisdiction, and the court may grant, an injunction against any further violations of any such laws, regulations, or orders by such person.”

Labor Code § 1197.1 provides that:

“(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203.” See also IWC Wage Order No. 7-2001, item 4.

Labor Code § 210 provides, in relevant part:

“(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.”

Labor Code § 218.6 provides:

“In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.”

Labor Code § 218.5 provides, in relevant part:

“(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action.”

Labor Code § 1199 provides that:

“Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

Labor Code § 558 provides, in relevant part:

“(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.”

C. VIVINT failed to Pay Wages Owed Upon Termination of Employment in Violation of Labor code §§ 201, 202, 203 & 210.

Labor Code § 201 states, in relevant part:

“(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code § 202 states, in relevant part:

“(a) 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.”

While Claimant was employed by VIVINT, VIVINT willfully failed to timely pay Claimant and all other similarly situated aggrieved employees for all earned wages and commissions due to them upon termination of their employment with VIVINT, in violation of this section. Claimant and all other similarly situated aggrieved employees have therefore been deprived of all earned wages and commissions, in violation of this section.

Labor Code § 203 provides that:

“(a) If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 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 secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him 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 § 210 provides, in relevant part:

“(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.”

Labor Code § 218.5 provides, in relevant part:

“(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action.”

Labor Code § 218.6 provides:

“In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.”

D. VIVINT Unlawfully Deducted Wages in Violation of Labor Code § 221, 225, & 225.5

Labor Code § 221 states:

“It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

As stated above, Claimant alleges that VIVINT has a policy, practice, guideline and/or procedure by which door-to-door employees are only paid a portion of earned commissions at the time such commissions are earned and paid the remainder of these commission wages to door-to-door employees as a “back-end” or “residual” commission. Claimant alleges that VIVINT unlawfully withheld the remaining balance of these wages upon termination of door-to-door employees in violation of Labor Code § 221. Claimant further alleges that VIVINT unlawfully made deductions from wages for lodging, for ordinary negligence, and mistakes made during verification calls with customers.

Labor Code § 225 provides:

The violation of any provision of Sections 221, 222, 222.5, or 223 is a misdemeanor.”

Labor Code § 225.5 provides, in relevant part:

“In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

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

(b) 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.”

E. VIVINT Failed to Timely Furnish Legally Compliant Wage Statements in Violation of Labor Code §§ 226, 226.2, 226.3, and IWC Wage Order No. 7-2001.

Labor Code § 226(a) states, in relevant part:

“Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when 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...(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...(7) the name of the employee and only the last four digits of his or her social security number...(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...The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California...”

The wage statements provided by VIVINT to Claimant, and other current or former door-to-door employees, fail to comply with the requirements of §§ 226(a) and 226.2 by failing to provide all the information required by this section. The missing information required by §§ 226(a) and 226.2 includes, but is not limited to, the total hours worked, the beginning and/or ending dates of the pay period, name and address of the legal entity that is the employer, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, the overtime rate of pay, all deductions, and an itemization, accounting, or other explanation of how the commission is calculated.

Labor Code § 226.3 provides:

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

F. VIVINT Knowingly Required Door-to-Door Employees to Execute Unlawful Contractual Provisions in violation of Labor Code § 432.5

Labor Code § 432.5 states:

“No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

Upon information and belief, while Claimant was employed by VIVINT, VIVINT required Claimant, and other current or former door-to-door employees, to execute one or more written agreements regarding, *inter alia*, non-competition, non-solicitation, choice of law, choice of venue, employee indemnification, and mutual attorney's fees, all of which are prohibited by California law.

Labor Code § 432.5 does not specify a specific remedy for a violation. However, for Labor Code violations for which no civil penalty is specified, a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each subsequent violation. (Labor Code § 2699(f)(2)).

G. VIVINT Failed to Maintain Sufficient Employment Records in Violation of Labor Code §§ 1174 & 1174.5

Labor Code § 1174 states, in relevant part:

“Every person employing labor in this state shall...

(c) Keep a record showing the names and addresses of all employees employed...

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

Claimant alleges that, while employed by VIVINT, VIVINT failed to keep and maintain employment records in accordance with the location and temporal provisions of Labor Code § 1174.

Labor Code § 1174.5 provides:

“Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

H. VIVINT Failed to Provide Written Commission Agreements in Violation of Labor Code § 2751

Labor Code § 2751 states, in relevant part:

“(a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

(b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work

under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.”

Claimant allege that, while employed by VIVINT, Claimant and other current or former door-to-door employees, who were paid on a commission basis, were not provided with a written contract properly outlining the current method by which VIVINT calculated and/or paid commissions to door-to-door employees.

Labor Code § 2751 does not specify a specific remedy for a violation. However, for Labor Code violations for which no civil penalty is specified, a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each subsequent violation. (Labor Code § 2699(f)(2)).

I. VIVINT Employed License Required Workers Without a Valid State Contractors License in Violation of Labor Code §§ 1021 and 1021.5

Labor Code § 1021 states:

“Any person who does not hold a valid state contractor's license issued pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and who employs any worker to perform services for which a license is required, shall be subject to a civil penalty in the amount of two hundred dollars (\$200) per employee for each day of employment. The civil penalties provided for by this section are in addition to any other penalty provided by law.”

On information and belief, while Claimant was employed by VIVINT, VIVINT or its constituent entities did not hold a valid California Contractor’s State License, which is needed to employ HIS Licensed employees. Similarly, an HIS License is needed to solicit or sell residential solar systems in California pursuant to Bus. & Prof. Code §7152 et seq., and VIVINT employed door-to-door employees to solicit and/or perform sales of solar systems that did not hold the required HIS Licenses.

Labor Code § 1021.5 states:

“Any person who holds a valid state contractor's license issued pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and who willingly and knowingly enters into a contract with any person to perform services for which a license is required as an independent contractor, and that person does not meet the burden of proof of independent contractor status pursuant to Section 2750.5 or hold a valid state contractor's license, shall be subject to a civil penalty in the amount of two hundred dollars (\$200) per person so contracted with for each day of the contract. The civil penalties provided for by this section are in addition to any other penalty provided by law.”

III. LABOR CODE PROVISIONS VIOLATED BY VIVINT

Claimant alleges that VIVINT violated Labor Code §§ 201, 202, 203, 204, 210, 218.6, 221, 225, 225.5, 226, 226.2, 226.3, 432.5, 510, 558, 1021, 1021.5, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2751, 2800, & 2802.

If Claimant does not receive written notice from the Labor and Workforce Development Agency (“LWDA”) within the time prescribed in Labor Code § 2699.3 subd. (a)(2)(a) that the LWDA intends to investigate the alleged violations, Claimant intends to file an action against VIVINT seeking wages, expenses, penalties, and other allowed damages pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.) for the alleged violations, 66 days from the date of this notice.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'John J. Weber', with a long horizontal flourish extending to the right.

John J. Weber
For **KEEGAN & BAKER, LLP**