

SHORTLEGAL, APC
350 10TH AVE., SUITE 1000
SAN DIEGO, CA 92101

SHORTLEGAL, APC
Brian R. Short (SBN 236140)
Email: Brian@ShortLegal.com
Dorota A. James (SBN 309933)
Email: Dorota@ShortLegal.com
350 10th Ave., Suite 1000
San Diego, California 92101
Telephone: 619.272.0720
Facsimile: 619.839.3129

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/16/2021 at 11:34:00 AM
Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

Attorneys for Plaintiff SETH NORTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SETH NORTON, Individually and on behalf
of all similarly-situated employees of
Defendants in the State of California,

Plaintiffs,

v.

CARE MEDICAL TRANSPORTATION,
INC., a California corporation, and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2020-00036520-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

IMAGED FILE

SECOND AMENDED COMPLAINT

1. PAGA Claim for Civil Penalties (Labor Code Private Attorneys General Act of 2004 ("Paga"), Lab. Code §§ 2698, et seq.)

Initial Complaint Filed: October 13, 2020
First Amended Complaint Filed: December 21, 2021

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Plaintiff SETH NORTON on behalf of himself and all other aggrieved employees and the State of California alleges as follows:

I.

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff SETH NORTON (hereinafter “NORTON”), brings this PAGA representative action suit against Defendant CARE MEDICAL TRANSPORTATION, INC. (“CARE” or “Defendant”) and DOES 1 through 50, inclusive (collectively referred to herein as “Defendants”), on behalf of himself and all other current and former aggrieved employees and the State of California for engaging in a systemic pattern of wage and hour violations under California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

2. CARE MEDICAL TRANSPORTATION, INC. is a company that provides emergency medical transportation services in San Diego County, California.

3. SETH NORTON, at times relevant, was employed by Defendants as non-exempt emergency medical technician (“EMT”) in San Diego, California.

4. Plaintiff is informed and believes, and thereon alleges, that Defendants decreased their employment-related costs in order to increase their level of productivity and profits by systematically violating both state wage and hour laws and the applicable IWC Wage Order, including, but not limited to PAGA representative action claims for:

- a. Failing to pay for minimum, regular and overtime wages for all hours worked;
- b. Failing to provide and maintain accurate records and itemized wage statements;
- c. Failing to timely pay wages due during and upon termination of employment.;
- d. Failing to provide a paid training in the following areas: responding to shooter and mass casualty incidents and natural disasters, and preventing violence against emergency ambulance employees and patients;
- e. Failure to provide required mental health services;
- f. Failing to provide meal periods;
- g. Failure to compensate for meal periods;

1 h. Failure to comply with staffing of meal periods provisions;

2 i. Failure to provide reasonable temperature at work area.

3 5. Plaintiff brings this lawsuit seeking only PAGA remedies which are not a subject to any
4 arbitration agreements pursuant to California law, including any civil penalties, injunctive, restitution and
5 monetary relief against Defendants, and each of them, on behalf of all aggrieved employees and the State
6 of California to recover, among other things, PAGA remedies/penalties pursuant to Labor Code Section
7 2699, attorney's fees and costs pursuant to California Labor Code §§ 201, 202, 203, 204, 210, 218, 218.5,
8 218.6, 226, 510, 558, 558.1, 881, 883, 884, 885, 886, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et
9 seq., California Code of Civil Procedure 1021.5, and provisions of IWC Wage Order 9-2001. Plaintiff
10 reserves the right to name additional representatives throughout the State of California.

11 **II.**

12 **PARTIES, JURISDICTION AND VENUE**

13 6. Plaintiff SETH NORTON is and at all relevant times was a resident of the State of
14 California, and at all relevant times was employed by Defendants in San Diego, California.

15 7. Defendant CARE MEDICAL TRANSPORTATION, INC. ("CARE"), is a California
16 company doing business in California, including San Diego County, California.

17 8. Plaintiff is informed and believes, and thereon alleges, that at times relevant CARE, and
18 Does 1 through 50 are the alter egos of each other and directly or indirectly, or through agents or other
19 persons, employed Plaintiff and other current and former aggrieved employees, and exercised control over
20 their wages, hours, and/or working conditions. Plaintiff is informed and believes, and thereon alleges,
21 that each Defendant directly or indirectly, or through agents or other persons, acted and/or ratified in all
22 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
23 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the
24 other Defendants.

25 9. Plaintiff was, at times relevant, employed by Defendants in San Diego, California as an
26 emergency medical technician and was subject to the employment policies, procedures and practices
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1 implemented by Defendants which applied to all of their employees throughout the State of California,
2 including in San Diego.

3 10. Defendants, at all relevant times, conducted business in the State of California and were
4 employers who violated, or caused to be violated, a section of Part 2, Chapter 1, of the California Labor
5 Code or any provision regulating hours and days of work in any order of the Industrial Welfare
6 Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code
7 § 558 and or 558.1.

8 11. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive,
9 are presently unknown to Plaintiff. Plaintiff will amend this Complaint setting forth the true names and
10 capacities of these fictitious defendants when they are ascertained. Plaintiff is informed and believes, and
11 on that basis, alleges that each of the fictitious Defendants have participated in the acts alleged in this
12 Complaint.

13 12. Jurisdiction and venue are proper for the San Diego Superior Court because Defendants
14 maintain offices, transact business, and/or have an agent in San Diego Superior County and some of the
15 acts and events complained of herein occurred in the judicial district of San Diego County Superior Court
16 and the State of California.

17 **III.**

18 **GENERAL ALLEGATIONS**

19 13. Plaintiff SETH NORTON was employed with Defendants from January 6, 2020 until July
20 27, 2020 when he resigned.

21 14. Defendant CARE is a San Diego company that provides emergency medical transportation
22 services in San Diego County, California.

23 15. Plaintiff and all other aggrieved employees worked under numerous Defendants' policies,
24 practices, and procedures relating to the hours worked, wage statements, recordkeeping, and payment of
25 wages applicable to Plaintiff and all other aggrieved employees of Defendants in the State of California.
26 Defendants failed to pay all wages, including regular, minimum, and overtime wages, to Plaintiff and all
27 other aggrieved employees as a result of Defendants' unlawful policies and practices.

1 16. During their tenure with Defendants, Plaintiff and all other aggrieved employees were non-
2 exempt hourly employees eligible for overtime wages for work in excess of eight (8) hours a day and 40
3 hours within a workweek but they were not paid at least minimum wage for each hour worked, nor were
4 they provided overtime wages for all overtime hours worked.

5 17. At all times relevant, Defendants required Plaintiff and other class members to remain on
6 call during the entirety of their shifts and carry radios, pagers, and other electronics, and keep those devices
7 on, to remain vigilant and responsive to calls when the need arose. Plaintiff and all other aggrieved
8 employees were required to remain on-call and carry the portable communication devices during their
9 lunch breaks as well to ensure any CARE dispatcher would be able to reach them in case they needed to
10 get immediately to an emergency scene. In addition, at all relevant times, Plaintiff and other all other
11 aggrieved employees were required to remain in close proximity to their ambulances during their lunch
12 breaks in order to reach them as quickly as possible, if needed.

13 18. While Plaintiff and all other current and former aggrieved employees were required by
14 Defendants to be on call during the entirety of their shifts, Defendants had a practice of automatically
15 clocking out and in Plaintiff and all other aggrieved employees for their lunches and deducting 30-minutes
16 from their daily total hours worked during a single shift despite the fact that they were working. As result
17 of the illegal practice, Plaintiff and all other current and former aggrieved employees were not
18 compensated for all minimum, regular and overtime wages as required under the relevant Labor Code
19 provisions, including but not limited to Labor Code Section 885(b).

20 19. In addition, because Plaintiff was paid an hourly rate of \$13.00, a California statewide
21 minimum wage, the automatic deduction of 30 minute per every shift Plaintiff worked effectively
22 decreased his hourly rate below the required minimum wage required by the California Labor Code. On
23 information and belief, other putative Class Members were subject to this unlawful practice and policy.

24 20. Additionally, at all relevant times, in violation of Labor Code Section 88(a), Plaintiff and
25 all other aggrieved employees were denied meal periods as prescribed by the California Industrial Welfare
26 Commission. Specifically, Defendant failed to provide Plaintiff, and on information and belief other
27 aggrieved employees with a second meal periods on workdays when Plaintiff and other aggrieved
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1 employees worked more than ten (10) hours. On information and belief, Plaintiff and all other aggrieved
2 employees did not voluntarily or willfully waive the mandated meal periods.

3 21. At all relevant times, Defendants failed to provide Plaintiff with wage statements
4 accurately itemizing information required by Labor Code § 226(a) and Section 7 of the applicable Wage
5 Order including. The wages statements that were provided did not include all the items required by law
6 and some of information they did contain was inaccurate. For example, the wage statements did not
7 include all regular and overtime hours worked and all wages earned. On information and belief, other s
8 all current and former aggrieved employees were subject to the same policy and practice concerning wage
9 statements and receive similarly deficient wage statements.

10 22. As a result of these deficiencies and inaccuracies, Plaintiff and other all aggrieved
11 employees were not able to promptly and easily determine from the wage statements alone their total
12 overtime and/or all wages earned.

13 23. Defendants failed to maintain accurate records reflecting all wages earned as required by
14 law.

15 24. Defendants failed to pay Plaintiff and other all aggrieved employees for all wages due and
16 owing and by the times required by law in the time periods set forth by Labor Code § 204 and Section 4
17 of the applicable Wage Order in that Defendants failed to properly compensate said employees for all
18 hours worked.

19 25. Defendants failed to pay Plaintiff SETH NORTON and other all aggrieved employees all
20 wages due and owing at the time of termination of employment as required by Labor Code §§ 201(a) and
21 202(a), as applicable, because Plaintiff SETH NORTON and all other aggrieved employees were not
22 properly compensated for all hours worked. On information and belief, Defendants willingly withheld
23 wages including, but not limited to overtime wages.

24 26. At all relevant times, Defendants failed to outfit the ambulances driven by Plaintiff and all
25 other aggrieved employees with properly functioning air-conditioning systems which are necessary to
26 provide a reasonable and safe temperature for the EMTs to perform their job duties. Plaintiff and, on
27 information and belief other aggrieved employees, repeatedly informed Defendants that the air-
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1 conditioning systems in their ambulances were routinely not functioning, but Defendant failed to have the
2 air-conditioning system fixed to ensure that the work environment met the conditions required by Section
3 15 of the applicable IWC Wage Order. As result of Defendants' failure to provide properly air-conditioned
4 ambulances, Plaintiff and other aggrieved employees have been exposed to extreme heat, especially during
5 summer and early autumn where the temperatures reach above 80-90 degrees inside the vehicles.

6 27. At all relevant times, Defendants failed to provide to Plaintiff and all aggrieved employees
7 training in each of the following areas: in responding to active shooter and mass casualty incidents and
8 natural disasters; and preventing violence against emergency ambulance employees and patients as
9 required under Labor Code Sections 881 (b)-(c) and 883 (a).

10 28. At no point during the first 30 days after being hired, Plaintiff received employer-paid
11 mental health and wellness education. Defendants also failed to inform Plaintiff about available mental
12 health treatments and support services and provide general information regarding common mental health
13 illnesses pursuant to Labor Section 884 (a). On information and belief, other putative Class Members were
14 subject to this unlawful practice and policy.

15 29. Plaintiff also alleges that at times, Defendants scheduled Plaintiff's and, on information
16 and belief, other aggrieved employees' meal periods during the first and/or last hour of a work shift in
17 violation of Labor Code Section 886(a)(1).

18 IV.

19 PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION

20 30. The Cause of Action alleged herein is appropriately suited for a Labor Code Private
21 Attorneys General Act of 2004 (hereinafter referred to as "PAGA") representative action because:

- 22 a. This action involves allegations of violations of provisions of the California Labor Code
23 that either do not provide for a civil penalty or provide for a civil penalty to be assessed
24 and collected by the Labor and Workforce Development Agency (hereinafter referred to
25 as "LWDA") or any departments, divisions, commissions, boards, agencies or
26 employees;

1 b. Plaintiff NORTON is an "aggrieved employee" because he was employed by the alleged
2 violators during the applicable statutory period and had one or more of the alleged violations
3 committed against him and, therefore, is properly suited to represent the interests of all other
4 current and former aggrieved employees of Defendants;

5 c. Plaintiff NORTON seeks to recover all applicable penalties under PAGA on behalf of
6 himself and all other aggrieved employees pursuant to Labor Code § 2699 as well as
7 attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative
8 action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court*
9 (2009) 46 Cal.4th 969. Therefore, Plaintiff is not required to, nor does he seek class
10 certification of the PAGA claims under Code of Civil Procedure § 382.

11 d. Pursuant to Labor Code § 2699.3(a), Plaintiff NORTON has complied with his notice
12 requirements by serving via certified mail, return receipt requested to Defendant CARE
13 MEDICAL TRANSPORTATION, INC. and by online filing to the LWDA, a notice with his
14 claims for wage and hour violations and penalties. The PAGA claims have been tolled during
15 the pendency of the notice period to the LWDA. Thereafter, on March 29, 2021, Plaintiff
16 submitted an amended written notice by online filing to the Labor and Workforce
17 Development Agency ("LWDA") and by certified mail to Defendants, of the specific
18 provisions of the Labor Code alleged to have been violated, including the facts and theories
19 to support the alleged violations. The statutory period expired, and the LWDA did not serve
20 Plaintiff NORTON with a notice of intent to assume jurisdiction over the applicable penalty
21 claims. Therefore, Plaintiff NORTON satisfied and exhausted the procedural notice
22 requirement to pursue penalties against Defendants pursuant to Labor Code § 2698, *et seq.*

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VI.
CAUSES OF ACTION

FIRST CAUSE OF ACTION
PRIVATE ATTORNEY GENERAL ACT (PAGA)

(Violation of Labor Code § 2699, *et seq.*)
(Alleged by Plaintiff Individually and On Behalf of all current and former Aggrieved Employees
Against All Defendants)

31. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

32. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

33. Plaintiff NORTON is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of other current and former aggrieved employees of Defendants.

34. On or about September 27, 2020 pursuant to Labor Code § 2698, *et seq.*, Plaintiff NORTON served via certified mail, return receipt requested, the LWDA, and DEFENDANT with his claims for wage and hour violations and penalties. Thereafter, on March 29, 2021, Plaintiff submitted an amended written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. The statutory period expired, and the LWDA did not serve Plaintiff with a notice of intent to assume jurisdiction over the applicable penalty claims. Therefore, Plaintiff has satisfied and exhausted the procedural notice requirement to pursue penalties against Defendants pursuant to Labor Code §2698, *et seq.*

35. 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

1 conditions of labor prohibited by the order is unlawful.”

2 36. Defendants violated Labor Code §§ 885(b), 1194, 1197, and 1198 by failing to pay Plaintiff
3 and current and former aggrieved employees at least minimum and regular wages for the time permitted
4 to work, engaged in work, and/or under Defendants’ control as alleged herein. Under Labor Code § 2699
5 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an
6 initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

7 37. Defendants violated Labor Code §§ 510 and 1198 by failing to pay Plaintiff and current
8 and former aggrieved employees overtime wages for the time permitted to work, engaged in work, and/or
9 under Defendants’ control as alleged herein. On information and belief, at all relevant times, Plaintiff and
10 other current and former aggrieved employees were not paid overtime wages when they worked in excess
11 of eight (8) hours a day or forty (40) hours within a workweek. Therefore, under Labor Code § 2699 (f)(2)
12 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial
13 violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

14 38. Defendants violated Labor Code § 885(a), and Sections 11 of the applicable IWC Order by
15 failing to provide Plaintiff and other aggrieved employees with meal periods as mandated by the Industrial
16 Welfare Commission. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the
17 assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699 (f)(2), and
18 seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

19 39. In violation of Labor Code § 886 (a), Defendants scheduled Plaintiff’s and, on information
20 and belief, other aggrieved employees’ meal breaks during the first or last hour of a work shift. Therefore,
21 under Labor Code § 2699 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved
22 employee per pay period for an initial violation and \$200 for each aggrieved employee per pay period for
23 each subsequent violation.

24 40. On information and belief, Defendants failed to comply with Labor Code §§ 881 (b)-(c) and
25 883 (a) requiring Defendants to provide to Plaintiff and all aggrieved employees training in each of the
26 following areas: in responding to active shooter and mass casualty incidents and natural disasters; and
27 preventing violence against emergency ambulance employees and patients. As result of Defendants’
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1 failure, Plaintiff and other aggrieved employees are entitled to a civil penalty of \$100 for each aggrieved
2 employee per pay period for an initial violation and \$200 for each aggrieved employee per pay period for
3 each subsequent violation pursuant to Labor Code § 2699 (f)(2).

4 41. Defendants failed to provide Plaintiff and, on information and belief other aggrieved
5 employee with a paid mental health and wellness education during the first 30 days of their employment
6 with Defendants. Defendants also failed to inform Plaintiff about available mental health treatments and
7 support services and provide general information regarding common mental health illnesses pursuant to
8 Labor Section 884 (a). As a result of the Defendants' violations of Labor Code § 884(a), Plaintiff seeks
9 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks
10 to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

11 42. Section 15 of the applicable IWC order requires that the temperature maintained in each
12 work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the
13 process and work performed. As alleged above, Plaintiff and other aggrieved employees spent the majority
14 of their shifts in ambulances owned and maintained by Defendants. The ambulances are not equipped with
15 properly functioning air-conditioning systems which are necessary to provide a reasonable and safe
16 temperature for the EMTs to perform their job duties. As result of Defendants' failure to provide properly
17 air-conditioned ambulances, Plaintiff and other aggrieved employees have been exposed to extreme heat,
18 especially during summer and early autumn where the temperatures reach above 80-90 degrees inside the
19 vehicles. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment
20 of all applicable and available PAGA remedies pursuant to Labor Code § 2699 (f)(2), and seeks to recover
21 all attorneys' fees, costs, and/or any other damages permitted under PAGA.

22 43. Defendants violated Labor Code §§ 226(a), 1174(d), and 1198 and Section 6 of the
23 applicable IWC Wage Order by failing to maintain and provide Plaintiff and other current and former
24 aggrieved employees of Defendants with accurate wage statements itemizing all information required by
25 Labor Code § 226(a), as alleged herein, including the correct number of hours worked and the correct total
26 wages earned. Unlike class action claims, a PAGA plaintiff need not meet the "injury" and "knowing and
27 intentional" violation requirements of Labor Code § 226(e). See *Lopez v. Friant & Associates, LLC* (2017)
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1 15 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under PAGA for a violation of section 226(a)
2 does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”);
3 See also *Lawson v. ZB, N.A.* (2017) 18 Cal.App.5th 705, 722 (“the scienter requirement [of § 226(e)] has
4 no application in a PAGA claim for violation of [§ 226(a)]”). Thus, under Labor Code § 2699(f)(2),
5 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial
6 violation of Labor Code §§ 226(a) and 1198, and \$200 for each aggrieved employee per pay period for
7 each subsequent violation.

8 44. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount of \$250 per
9 violation in an initial citation and \$1,000 for each violation in a subsequent citation for failure to provide
10 accurate itemized wage statements.

11 45. Under Labor Code § 1174.5 an employer who willfully fails to maintain the records by
12 Labor Code § 1174 is a subject to a civil penalty of \$500.

13 46. Defendants violated Labor Code §§ 201, 202, 203, and 1198 by failing to pay Plaintiff and
14 other current and former aggrieved employees all overtime wages owed and all meal premiums wages
15 owed by the time set forth by law upon their separation of employment as alleged herein. Thus, under
16 Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee
17 per pay period for the initial violation of Labor Code §§ 201, 202, 203, and 1198, and \$200 for each
18 aggrieved employee per pay period for each subsequent violation.

19 47. Defendants violated Labor Code §§ 204 and 1198 by failing to pay Plaintiff and other
20 current and former aggrieved employees all overtime wages owed by the time set forth by law upon during
21 their employment as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a
22 civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code
23 §§ 204 and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

24 48. As set forth herein, Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226,
25 510, 1174, 1198 and Labor Code § 2699, *et seq.*, imposes upon Defendants, and each of them, penalties
26 for violating the Labor Code, including those penalties set forth in 210, 226.3, 558, 1174.5 and 2698, *et*
27 *seq.*

49. Pursuant to Labor Code § 2699, Plaintiff NORTON seeks to recover civil penalties on behalf of himself and other current and former aggrieved employees of Defendants who suffered one or more the labor code violations described herein. The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

50. For bringing this action, Plaintiff NORTON is entitled to attorney's fees and costs incurred herein.

WHEREFORE, Plaintiff NORTON prays for relief as hereinafter requested.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for damages for judgment against Defendants, jointly and severally, as applicable, as follows:

- a. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission including, but not limited to, civil penalties recoverable under Cal. Labor Code pursuant to Labor Code §2698 et seq.;
- b. For reasonable attorney's fees and cost of suit and, to the extent permitted by law, including pursuant to Labor Code §§ 218.5, 226, 1194, and Code of Civil Procedure § 1021.5; and
- c. An award of such other and further relief as this Court deems proper and just.

Dated: March 29, 2021

ShortLegal, APC



By:

BRIAN R. SHORT
DOROTA A. JAMES
Attorneys for Plaintiff SETH NORTON

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury to the extent authorized by law.

Dated: March 29, 2021

ShortLegal, APC



By: _____

BRIAN R. SHORT

DOROTA A. JAMES

Attorneys for Plaintiff SETH NORTON