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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO – NORTH COUNTY DIVISION**

11 OTIS WILLIAMS, individually and as a
12 private attorney general on behalf of the
State of California,

13 Plaintiff,
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15 v.

16 CDIS, INC., a Virginia Corporation; and
DOES 1-50 inclusive,

17 Defendant.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
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By Comina Salazar, Deputy Clerk

Case No. 37-2020-00043842-CU-OE-NC

1. Civil Penalties Pursuant to the Private
Attorneys General Act of 2004, Labor
Code § 2698, et seq.

COMES NOW, Plaintiff Otis Williams ("Plaintiff"), individually and on behalf of the general public as private attorneys general, hereby asserts representative claims against Defendant CDIS, Inc. ("Defendant") as follows:

INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code sections 2698 *et seq.* PAGA permits "aggrieved employees" to bring a lawsuit as a representative action on behalf of themselves and all other current and former employees, to recover civil penalties and address an employer's violations of the California Labor Code.

2. Plaintiff brings this action pursuant to the PAGA on a representative basis on behalf of all employees employed as Field Service Technicians and Field Service Technician Supervisors by CDIS, Inc. in the State of California from one year prior to the filing of the PAGA notice, as tolled by California Rules of Court, Emergency Rule 9(a)¹ (the "Aggrieved Employees").

3. Plaintiff brings this suit on behalf of himself and the Aggrieved Employees during the relevant time period to recover civil penalties and address the employer's violations of the California Labor Code and the IWC Wage Order 7-2001.

4. In this case, Defendant violated various provisions of the California Labor Code and Industrial Welfare Commission ("IWC") Wage Orders. As set forth below, CDIS maintained and implemented policies and procedures which resulted in a failure to pay wages for all hours worked under California Labor Code sections 1194 and 1197² including failure to separately compensate for "non-productive" time separate from any piece-rate compensation such as rest periods, travel time, waiting time, meeting time, and training time; failure to properly calculate and pay overtime for all hours worked in excess of eight hours in a workday, the first eight hours on the seventh consecutive workday, and/or forty hours in a workweek or and double wages for

¹ Pursuant to Appendix I of the California Rules of Court, Emergency Rule 9(a), "the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020."

² Undesignated statutory references are to the California Labor Code.

1 all hours worked in excess of twelve hours in a workday or eight hours on the seventh
2 consecutive workday in a workweek under section 510; failure to provide meal periods under
3 sections 512, 226.7 and the applicable wage order; failure to authorize and permit paid rest
4 periods under section 226.7 and the applicable wage order; failure to timely pay all wages owed
5 upon separation under sections 201, 202, 203; failure to timely pay all wages owed during
6 employment under section 204; failure to pay sick leave under section 246; failure to provide
7 accurate, itemized wage statements under section 226; failure to reimburse business expenses
8 under section 2802; and unlawful deduction of wages under section 224.

9 5. Plaintiff in his representative capacity seeks civil penalties on behalf of himself
10 and other Aggrieved Employees pursuant to PAGA for Defendant failure to comply with
11 California Labor Code and IWC Wage Order requirements.

12 **JURISDICTION AND VENUE**

13 6. The California Superior Court has jurisdiction over this action pursuant to
14 California Constitution Article VI, Section 10, which grants the Superior Court "original
15 jurisdiction in all cases except those given by statute to other trial courts." The statutes under
16 which this action is brought do not give jurisdiction to any other court.

17 7. This Court has jurisdiction over Defendant because, upon information and belief,
18 Defendant is either a resident of California, has sufficient minimum contacts in California, or
19 otherwise intentionally avails itself of the California market so as to render the exercise of
20 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
21 substantial justice. Further, Defendant has done and is doing business in California and in San
22 Diego County by maintaining and operating offices in San Diego County, California. The
23 unlawful acts alleged herein have a direct effect on Plaintiff and the Aggrieved Employees
24 within San Diego County and throughout the State of California and Defendant has employed
25 numerous Aggrieved Employees in San Diego County and throughout the State of California.

26 8. This Court also has jurisdiction in this matter because the individual claims of the
27 Plaintiff described herein are presently believed to be under the seventy-five thousand dollar
28 (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate potential damages and

1 recovery by all of the claims of the Aggrieved Employees, including attorneys' fees, placed in
2 controversy by Plaintiff's claims, is presently believed to be under the five million dollar
3 (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005. Further, there is no federal
4 question at issue, as the issues herein are based solely on California statutes and law, including
5 the Labor Code and IWC Wage Orders.

6 9. Venue is proper in this Court pursuant to California Code of Civil Procedure,
7 Sections 395 and 395.5, because Plaintiff worked for Defendant in this County and Defendant (i)
8 currently maintains and at all relevant times maintained offices and facilities in this County
9 and/or conduct substantial business in this County, and (ii) committed the wrongful conduct
10 herein alleged in this County against Plaintiff and Aggrieved Employees.

11 **THE PARTIES**

12 10. Mr. Williams is an individual domiciled and residing in San Diego County,
13 California. Mr. Williams was employed by Defendant from approximately September 2016 to
14 August 2020.

15 11. CDIS, Inc. is a Virginia corporation located at 407 Industry Drive, Virginia
16 23661. CDIS's west coast headquarters is located at 4749-C Oceanside Blvd., Oceanside,
17 California 92056. CDIS is a provider of high technology telecommunication infrastructure and
18 cabling services and products with locations in Oceanside and San Clemente, California.

19 12. Whenever in this complaint reference is made to any act, deed, or conduct of
20 Defendant, the allegation means that Defendant engaged in the act, deed, or conduct by or
21 through one or more of Defendant's officers, directors, agents, employees, or representatives,
22 who was actively engaged in the management, direction, control, or transaction of the ordinary
23 business and affairs of Defendant.

24 13. The true names and capacities of Defendant, whether individual, corporate,
25 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
26 Plaintiff, who therefore sue Defendant by such fictitious names under Code of Civil Procedure §
27 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
28 capacities of the Defendant designated hereinafter as DOES when such identities become known.

14. Plaintiff is informed and believes, and thereon allege, that the Doe Defendant are the partners, agents, or principals and co-conspirators of Defendant and of each other; that Defendant and the Doe Defendant performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendant is liable to the extent of the liability of the Defendant as alleged herein.

15. Plaintiff is further informed and believes, and thereon allege, that at all times material herein, each Defendant was completely dominated and controlled by its co-Defendant and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Defendant, such allegations and references shall also be deemed to mean the conduct of each of the Defendant, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendant in this complaint, but were employees and/or agents of Defendant, such individuals, at all relevant times acted on behalf of Defendant named in this complaint within the scope of their respective employments.

FACTUAL ALLEGATIONS

16. During the relevant period, Defendant employed Field Service Technician and Field Service Technician Supervisors to, among others, install residential and commercial video, internet, and phone services and maintenance for Cox Communications.

17. Under CDIS's point based compensation model, Aggrieved Employees were paid a certain number of points for each job completed, regardless of the amount of time spent on each job.

18. For each point exceeding 480 points per week, Aggrieved Employees were eligible for “overtime” at 1.5 times per point based on their current rate. However, points were not correlated to the number of hours Aggrieved Employees worked. For example, Aggrieved Employees could work 50 hours in a workweek but earn less than 480 points and not receive overtime.

19. In addition, Defendant did not pay double time for hours worked in excess of

1 twelve hours per day or eight hours on the seventh consecutive day of work.

2 20. Defendant misclassified Field Service Technician Supervisors as exempt
3 employees. Despite the job title of a field service technician “supervisor,” Field Service
4 Technician Supervisors’ actual duties do not meet the requirements for the strict duties test. In
5 fact, the majority, and certainly more than 50% of Filed Technician Supervisors’ time was spent
6 performing the same duties as Field Service Technicians, including installation of video, internet,
7 and phone services and maintenance for Cox Communications customers. In addition, Field
8 Service Technician Supervisors do not regularly exercise discretion or independent judgment,
9 nor do they have the ability to hire and/or fire employees.

10 21. Defendant’s point based compensation model did not compensate Aggrieved
11 Employees for “non-productive” time including but not limited to spent between jobs, travel time
12 to and from jobs, taking company vehicles to maintenance appointments, cleaning company
13 vehicles, fueling company vehicles, recording, preparing, and tallying points for payroll,
14 training, meetings, and refreshing and reconciling inventory of equipment.

15 22. In addition, CDIS did not separately compensate Aggrieved Employees for rest
16 and recovery periods pursuant to section 226.2.

17 23. As a result of CDIS’s policies, as well as the productivity requirements and
18 rigorous work schedules implemented and enforced by CDIS, Plaintiff and Aggrieved
19 Employees were unable to take off duty meal and were not fully relieved of their duties for meal
20 breaks. On shifts lasting more than five hours, Plaintiff and Aggrieved Employees were required
21 to perform work as directed by CDIS for more than five (5) hours during a shift without
22 receiving a meal break. In addition, on shifts lasting more than ten hours, Plaintiff and
23 Aggrieved Employees were not provided a second meal break as required by law.

24 24. As a result of CDIS’s policies, as well as the productivity requirements and
25 rigorous work schedules implemented and enforced by CDIS, Plaintiff and Aggrieved
26 Employees were unable to take off duty rest breaks and was not fully relieved of their duties for
27 rest breaks. On shifts lasting more than four hours, Plaintiff and Aggrieved Employees were
28 required to perform work as directed by CDIS without receiving a paid rest period for every four

1 hours worked or major fraction thereof as evidenced by daily reports, including a third rest break
2 on shifts lasting more than ten hours as required by law.

3 25. For example, Plaintiff and Aggrieved Employees were assigned a certain number
4 of jobs per day including travelling between jobs which did not allow for the opportunity to take
5 uninterrupted, off-duty meal and rest periods. Indeed, Plaintiff and Aggrieved Employees were
6 forced to forego meal and rest periods or risk being written up and potentially terminated for
7 being late to their appointments or not completing all jobs assigned to them.

8 26. Defendant also failed to reimburse Plaintiff and Aggrieved Employees for all
9 expenses incurred in the discharge of their duties, including but not limited to costs incurred to
10 clean company vehicles and tools necessary to perform their job duties.

11 27. Defendant willfully failed to furnish Aggrieved Employees with accurate,
12 itemized wage statements. Specifically, the wage statements failed to accurately itemize and
13 include the total hours worked including non-productive time and rest periods, gross wages
14 earned, net wages earned, all applicable hourly rates in effect during the pay period including
15 overtime rates, and rest period premiums.

16 28. Moreover, pursuant to Labor Code § 226.2, an employee paid on a piece-
17 rate basis shall be, among other things, compensated: (1) for rest and recovery periods and other
18 nonproductive time separate from any piece-rate compensation; (2) the itemized wage statements
19 shall separate state (i) the total hours of compensable rest and recovery periods; (ii) the rate of
20 compensation; and (iii) the gross wages for those periods during the pay period. Defendant
21 violated Labor Code § 226.2 by failing to provide itemized wage statements to Plaintiff showing
22 the total hours of compensable rest and recovery periods and non-productive time, and the gross
23 wages earned for those periods during the pay period.

24 **Misclassification**

25 29. For individuals to qualify as exempt employees, California requires that: (1) they
26 perform exempt duties more than 50% of their work time, and (2) they must earn a salary of no
27 less than two times the statute minimum wage for full-time employments.

28 30. CDIS misclassified Filed Service Technician because they did not customarily

1 and regularly exercise discretion and independent judgment in their jobs, nor did they have the
2 ability to hire and fire employees. In fact, a majority, and certainly more than 50%, of their time
3 was spent performing the same duties as Field Service Technicians including installation of
4 video, internet, and phone services and maintenance.

5 31. As a result of CDIS's misclassification of Field Service Technician Supervisors,
6 CDIS failed to pay minimum wages, failed to pay overtime wages, failed to provide meal
7 periods, failed to authorize and permit rest periods, failed to timely pay wages, and failed to
8 provide accurate itemized wage statements.

9 **Failure to Pay Minimum Wages**

10 32. The point based compensation plan provides for payment of wages to Aggrieved
11 Employees based on purported estimates of time that certain activities should take, not actual
12 hours worked.

13 33. Aggrieved Employees were not paid at least minimum wage for "non-productive"
14 time including but not limited to waiting time spent between jobs, travel time to and from jobs,
15 taking company vehicles to maintenance appointments, cleaning company vehicles, fueling
16 company vehicles, recording, preparing, and tallying points for payroll, training, meetings, and
17 refreshing and reconciling inventory of equipment.

18 34. In addition, Aggrieved Employees were not separately paid for time spent during
19 rest and recovery periods pursuant to section 226.2(a)(3)(A).

20 35. Aggrieved Employees who were misclassified as exempt were not paid at least
21 minimum wage for all hours worked because they were only paid for 40 hours per week, yet
22 often worked in excess of 40 hours per week.

23 **Failure to Pay Overtime Wages**

24 36. During all relevant periods, both the California Labor Code and pertinent wage
25 orders required that all work performed by an employee in excess of eight (8) hours in any
26 workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any
27 workweek be compensated at one and one-half times the employee's regular rate of pay. In
28 addition, all work performed by an employee in excess of twelve (12) hours in any workday,

1 or eight (8) hours on the seventh day of work in any workweek be compensated at two times the
2 employee's regular rate of pay.

3 37. Defendant failed to properly calculate and to pay Aggrieved Employees overtime
4 wages for all hours worked in excess of eight (8) hours per workday and/or for the first eight
5 hours worked on the seventh consecutive day of work in a workweek and/or forty (40) hours per
6 workweek, and double time wages for all hours worked in excess of twelve (12) hours in any
7 workday, and/or eight (8) hours on the seventh day of work in any workweek.

8 38. Under Defendant's point based compensation plan, for each point exceeding 480
9 points per week, Plaintiff was eligible for "overtime" at 1.5 times per point based on his current
10 rate. However, points were not correlated to the number of hours Plaintiff worked. For example,
11 Aggrieved Employees could work 50 hours in a workweek but earn less than 480 points and not
12 receive overtime.

13 39. Defendant did not pay double time or 2 times per point for hours worked in
14 excess of twelve (12) hours in a workday and/or eight (8) hours in a workweek.

15 40. In addition, upon information and belief, Defendant failed to include bonus
16 compensation when calculating Aggrieved Employee's overtime regular rate.

17 41. Moreover, Defendant's misclassification of Field Service Technician Supervisors
18 resulted in a failure to pay overtime.
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20 **Failure to Provide Meal Periods**

21 42. Pursuant to California Labor Code section 512, an employer may not employ an
22 employee for a work period of more than five hours per day without providing the employee
23 with an uninterrupted meal period of not less than thirty minutes, except that if the total work
24 period per day of the employee is not more than six hours, the meal period may be waived by
25 mutual consent of both the employer and the employee.

26 43. A second meal period of not less than thirty minutes is required if an employee
27 works more than ten hours per day, except that if the total hours worked is no more than 12
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1 hours, the second meal period may be waived by mutual consent of the employer and the
2 employee but only if the first meal period was not waived.

3 44. If an employer fails to provide an employee a meal period, the employer must pay
4 one additional hour of pay at the employee's regular rate of pay for each workday that the meal
5 period is not provided.

6 45. As a result of CDIS's policies, as well as the productivity requirements and
7 rigorous work schedules implemented and enforced by CDIS, Aggrieved Employees were often
8 unable to take off duty meal periods and/or was not fully relieved of their duties for meal
9 periods. Aggrieved Employees were required to perform work as directed by CDIS for more than
10 five (5) and ten (10) hours during a workday (as the case may be) without receiving a lawful
11 meal period(s) as evidenced by their daily reports.

12 46. Specifically, Aggrieved Employees were assigned a certain number of jobs that
13 had to be completed each day which did not allow for the taking of off-duty meal periods.

14 47. Upon information and belief, CDIS had no policy in place to compensate
15 Aggrieved Employees for these missed meal periods as required by applicable law.

16 48. Upon information and belief, Aggrieved Employees did not voluntarily or
17 willfully waive their meal periods.

18 **Failure to Authorize and Permit Paid Rest Periods**

19 49. The applicable IWC Wage Order also requires employers to authorize and permit
20 employees to take a net 10-minute rest period for every four hours worked for major fraction
21 thereof, which insofar as practicable shall be taken in the middle of each work period.

22 50. If an employer fails to authorize and permit an employee to take a rest period, the
23 employer must pay one additional hour of pay at the employee's regular rate of pay for each
24 workday that the rest period is not provided.

25 51. As a result of CDIS's policies, as well as the productivity requirements and
26 rigorous work schedules implemented and enforced by CDIS, Aggrieved Employees were often
27 unable to take off duty rest periods and/or were not fully relieved of his duties for rest periods.
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1 Plaintiff and was required to perform work as directed by CDIS for more than four (4) hours
2 during a workday without receiving a rest period and/or more than six (6) hours during a
3 workday without receiving a second rest period as evidenced by daily reports for these
4 employees.

5 52. In addition, the applicable IWC Wage Order requires that authorized rest period
6 time shall be counted as hours worked, for which there shall be no deduction from wages.

7 53. Defendant did not separately compensate Aggrieved Employees for time spent
8 during rest periods.

9 54. As a result of Defendant's failure to provide rest periods or compensation in lieu
10 thereof and its failure to pay for time spent on rest periods (when given), Aggrieved Employees
11 were not paid all earned wages as required by California Labor Code section 204.

12 **Failure to Pay Timely Pay Wages After Termination or Resignation**

13 55. Labor Code section 201(a) states: "If an employer discharges an employee, the
14 wages earned and unpaid at the time of discharge are due and payable immediately."

15 56. Labor Code section 202(a) states:

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17 If an employee not having a contract for a definite period quits his or her
18 employment, his or her wages shall become due and payable not later than 72
19 hours thereafter, unless the employee has given 72 hours previous notice of his or
20 her intention to quit, in which case the employee is entitled to his or her wages at
21 the time of quitting. Notwithstanding any other provision of law, an employee
22 who quits without providing a 72-hour notice shall be entitled to receive payment
23 by mail if he or she so requests and designates a mailing address. The date of the
24 mailing shall constitute the date of payment for purposes of the requirement to
25 provide payment within 72 hours of the notice of quitting.
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57. Plaintiff is informed and believes that Defendant willfully failed to timely pay all his wages due to Aggrieved Employees who have separated from their employment with Defendant for work performed including wages for “non-productive” time, rest periods, overtime wages, and premium wages for missed rest periods. As a result, CDIS violated Labor Code sections 201 and 202.

Failure to Pay Sick Leave

58. California Labor Code § 246(l) provides that an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

59. Upon information and belief, Defendant paid Aggrieved Employees sick leave using minimum wage and not pursuant to any of the allowable calculations under Labor Code § 246(l).

Failure to Provide Accurate Itemized Wage Statements

60. California Labor Code § 226 provides an employer must furnish employees with 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..., (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the legal entity that is the employer..., (8) the name and address of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...”

1 61. Moreover, pursuant to Labor Code § 226.2, an employee paid on a piece-rate
2 basis shall be, among other things, compensated: (1) for rest and recovery periods and other
3 nonproductive time separate from any piece-rate compensation; (2) the itemized wage statements
4 shall separate state (i) the total hours of compensable rest and recovery periods; (ii) the rate of
5 compensation; and (iii) the gross wages for those periods during the pay period.

6 62. Defendant violated Labor Code § 226.2 by failing to provide itemized wage
7 statements to Aggrieved Employees showing the total hours of compensable rest and recovery
8 periods and non-productive time, and the gross wages earned for those periods during the pay
9 period.

10 63. By failing to keep accurate records and provide accurate itemized wage
11 statements as required by section 226, Defendant has injured Plaintiff and Aggrieved Employees
12 by making it confusing and difficult to calculate the unpaid wages and losses and expenditures
13 (including wages, interest, and penalties thereon) due to Aggrieved Employees.

14 **Failure to Timely Pay Wages During Employment**

15 64. Pursuant to Labor Code § 204(a), “[a]ll wages, ..., earned by any person in any
16 employment are due and payable twice during each calendar month, on days designated in
17 advance by the employer as the regular paydays. Labor performed between the 1st and 15th
18 days, inclusive, of any calendar month shall be paid between the 16th and 26th day of the month
19 during which the labor was performed, and labor performed between the 16th and the last day,
20 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
21 month.”

22 65. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections
23 became due and payable to each employee in each month that he or she was not provided with a
24 rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

25 66. CDIS failed to pay Aggrieved Employees all wages owed during the pay period in
26 which the wages were earned in violation of Labor Code § 204 including minimum wage for
27 non-productive time, overtime and double time, as described herein.
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Failure to Reimburse Necessary Business Expenses

67. Labor Code § 2802 requires Defendant to indemnify employees for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

68. Plaintiff and Aggrieved Employees were required to incur expenses in the performance of their assigned job duties including costs to clean the company vehicle, tools including drills and drill bits, screwdrivers, pliers, flashlights, knee pads, and use of personal cell phones.

69. Defendant did not reimburse Aggrieved Employees or for such expenses.

70. Moreover, California Labor Code § 224 prohibits any deduction from an employee's wages which is not either authorized by the employee in writing or permitted by law. CDIS violated section 224 by unlawfully deducting wages for tools and other equipment without employee's authorization.

CAUSES OF ACTION

First Cause of Action

**PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT, LABOR
CODE SECTION 2698 ET SEQ.**

71. Plaintiff incorporates by reference each and every paragraph above, and realleges each and every allegation contained above as though fully set forth herein.

72. On October 15, 2020, Plaintiff gave written notice by online submission to the LWDA and by certified mail to Defendant of Defendant's violations of numerous provisions of the California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were paid as required by statute.

73. 65 days have passed, and no response has been received from the LWDA. Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

74. Plaintiff has exhausted all administrative procedures required of them under Labor Code §§2698, 2699 and 2699.3, and as a result, is justified as a matter of right in bringing forward this cause of action.

1 75. Plaintiff is an “aggrieved employee” as defined in Labor Code Section 2699(a), as
2 he was employed by Defendant during the statutory period and suffered on or more of the Labor
3 Code violations set forth herein. He seeks to recover on behalf of himself and all other current
4 and former other aggrieved employees of Defendant the civil penalties provided by PAGA, plus
5 reasonable attorney’s fees and costs.

6 76. Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018),
7 an employee who brings a representative action and was affected by at least one of the violations
8 alleged in the complaint has standing to pursue penalties on behalf of the state and not only for
9 that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has
10 standing to pursue penalties on behalf of the state for violations affecting all the aggrieved
11 employees at CDIS, regardless of their classification, job title, or locations.

12 77. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties
13 for which Defendant are liable due to numerous Labor Code violations as set forth in this
14 Complaint.

15 78. Plaintiff seeks to recover the PAGA civil penalties through a representative action
16 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
17 Cal.4th 969. Class certification of the PAGA claims is not required.

18 79. Pursuant to Labor Code section 2698 et seq and 2699(a), Plaintiff seeks to recover
19 civil penalties for which Defendant are liable due to numerous Labor Code and Wage Order
20 violations as set forth in this Complaint.

21 80. Specifically, Plaintiff, on behalf of himself and the Aggrieved Employees, seek
22 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 23 a. Defendant’s failure to comply with the requirement of Labor Code §1182.12,
24 1194, 1197, 1198, and Wage Order 7-2001 to pay at least minimum wage for
25 every hour worked;
- 26 b. Defendant’s failure to comply with the requirement of Labor Code §510, 1194,
27 1197, 1198, and Wage Order 7-2001 to pay all wages earned including overtime
28 wages at the Aggrieved Employee’s regular rate of pay;

- c. Defendant's failure to comply with the requirement of Labor Code §§204 and 210 to pay, without condition and within the time set by the applicable article, all wages, or parts thereof;
- d. Defendant's failure to comply with the requirement of Labor Code §225.5 to pay wages due;
- e. Defendant's failure to comply with the requirement of Labor Code §§201 and 202 to pay wages due to former employees;
- f. Defendant's failure to comply with the requirement of Labor Code §203 to pay waiting time penalties to former employees;
- g. Defendant's failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 7-2001 to authorize and permit ten (10) minute rest breaks;
- h. Defendant's failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 7-2001 to pay one hour of premium pay for each statutorily required rest break that was not authorized and permitted;
- i. Defendant's failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Order 7-2001 to provide timely, uninterrupted 30 minute off-duty meal periods;
- j. Defendant's failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 7-2001 to pay one hour of premium pay for each lawful meal break that was not provided;
- k. Defendant's failure to pay used sick leave under Labor Code section 246(l);
- l. Defendant's failure to provide accurate compliant wage statements under Labor Code section 226;
- m. Defendant's failure to reimburse necessary expenses in violation of Labor Code § 2802; and
- n. Defendant's unlawful deduction of wages in violation of Labor Code § 224.

81. Plaintiff seeks civil penalties for Defendant's violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- 1 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204, Defendant is
2 subject to a civil penalty in the amount of one hundred dollars (\$100) for the
3 initial violation for each failure to pay each employee and two hundred (\$200) per
4 employee for violations in subsequent pay periods plus 25% of the amount
5 unlawfully withheld.
- 6 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a), Defendant
7 is subject to a civil penalty in the amount of two hundred and fifty dollars (\$250)
8 per aggrieved employee for the initial pay period where a violation occurs and
9 one thousand dollars (\$1,000) per aggrieved employee for violations in
10 subsequent pay periods.
- 11 c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting on
12 behalf of an employer who violates, or causes to be violated, a section of this
13 chapter or any provision regulating hours and days of work in any order of the
14 Industrial Welfare Commission,” including Labor Code §§ 510 and 512, shall be
15 subject to a civil penalty, in addition to any other penalty provided by law, of fifty
16 dollars (\$50) for initial violations for each underpaid employee for each pay
17 period for which the employee was underpaid and one hundred dollars (\$100) for
18 each subsequent violation for each underpaid employee for each pay period for
19 which the employee was underpaid.
- 20 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d),
21 Defendant are subject to a civil penalty of five hundred dollars (\$500).
- 22 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be paid to
23 any employee a wage less than the minimum fixed by an order of the commission,
24 shall be subject to a civil penalty as follows: for any initial violation that is
25 intentionally committed, one hundred dollars (\$100) for each underpaid employee
26 for each pay period for which the employee is underpaid; and for each subsequent
27 violation of the same offense, two hundred fifty dollars (\$250) for each underpaid
28

1 employee for each pay period for which the employee is underpaid regardless of
2 whether the initial violation was intentionally committed.

3 82. Further, as a result of the acts alleged hereinabove, Plaintiff seek penalties under
4 Labor Code §§2698 et seq. and 2699 because of Defendant's violation of numerous provisions of
5 the California Labor Code and IWC Wage Orders.

6 83. Under Labor Code §2699, Plaintiff and Aggrieved Employees are entitled to \$100
7 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions
8 of the California Labor Code.

9 84. Under Labor Code §2699, Plaintiff and Aggrieved Employees should be awarded
10 twenty-five percent (25%) of all penalties due under California law, interest, attorneys' fees and
11 costs.

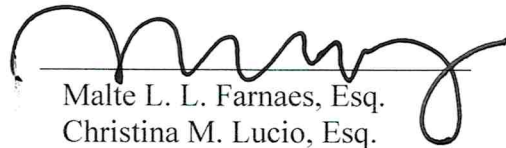
12 85. Under Labor Code §2699, the State of California should be awarded seventy-five
13 percent (75%) of the penalties due under California law.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays judgment against Defendant, as follows:

- 17 1. For penalties according to proof, pursuant to Labor Code section 2698 et seq.
18 2. For reasonable attorneys' fees and costs; and
19 3. For such other and further relief as the Court deems proper.

20
21 Dated: November 19, 2020


22 Malte L. L. Farnaes, Esq.
23 Christina M. Lucio, Esq.
24 Mitchell J. Murray, Esq.

25 Attorneys for Plaintiff Otis Williams,
26 in his representative capacity as private attorney general
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