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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR KERN COUNTY**

12 LAWRENCE HARRIS on behalf of himself
13 and others similarly situated and aggrieved,

14 Plaintiff,

15 vs.

17 TSC, LLC D/B/A THE SPACESHIP
18 COMPANY, an unknown entity; VIRGIN
19 GALACTIC HOLDINGS, INC., a Delaware
20 Corporation; VIRGIN GALACTIC, LLC, a
21 Delaware Limited Liability Company;
22 TALENTSCALE, INC., a Nevada
23 Corproation; and

DOES 1 to 100, inclusive,

Defendants.

Case No.: BCV-20-102744

**PRIVATE ATTORNEYS GENERAL ACT
("PAGA") REPRESENTATIVE
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff LAWRENCE HARRIS, and individual on behalf of himself and all other aggrieved
2 employees similarly situated, hereby files this Complaint against Defendant TSC, LLC D/B/A THE
3 SPACESHIP COMPANY, an unknown entity; Defendant VIRGIN GALACTIC HOLDINGS,
4 INC., a Delaware Corporation; Defendant VIRGIN GALACTIC, LLC, a Delaware Limited
5 Liability Company; Defendant TALENTSCALE, INC., a Nevada Corporation; and DOES 1 to
6 100, inclusive (collectively referred to herein as “Defendants”). Plaintiff is informed and believes,
7 and on the basis of that information and belief, allege as follows:

8 **THE PARTIES**

9 1. Plaintiff LAWRENCE HARRIS is, and at relevant times was, an individual domiciled in the
10 State of California and a citizen of the State of California who worked as a non-exempt technician
11 for Defendants in the State of California.

12 2. Defendant TSC, LLC D/B/A THE SPACESHIP COMPANY (“Defendant TSC”) is a
13 California limited liability company that, at all relevant times, was authorized to do business within
14 the State of California and is doing business in the State of California.

15 3. Defendant VIRGIN GALACTIC HOLDINGS, INC. (“Defendant “Virgin Galactic”) is a
16 Delaware Corporation that, at all relevant times, was authorized to do business within the State of
17 California and is doing business in the State of California.

18 4. Defendant TALENTSCALE, INC. (“Defendant Talenscale”) is a Nevada Corporation that,
19 at all relevant times, was authorized to do business within the State of California and is doing
20 business in the State of California.

21 5. Defendants TALENTSCALE, INC. is a staffing agency that focused in engineering and
22 technical services industries.¹

23 6. Defendant TSC, LLC D/B/A THE SPACESHIP COMPANY is a spacecraft manufacturing
24 company that is owned and operated by Defendant VIRGIN GALACTIC HOLDINGS, INC. TSC,
25 LLC D/B/A THE SPACESHIP COMPANY was formed to own the technology for Virgin Galactic's
26 Virgin SpaceShip program.²

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28 ¹ <https://talentscale.com/>

² https://en.wikipedia.org/wiki/The_SpaceShip_Company

7. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendants by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

8. Plaintiff is further informed and believes that, at all relevant times, each Defendants were the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. Plaintiff is further informed and believes and thereon alleges that each Defendants acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendants knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

9. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions complained of herein. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of respondent superior. The conduct of Defendants' managers and supervisors was at all relevant times undertaken as employees of Defendants, acting within the scope of their employment or authority in all of the unlawful activities described herein.

JOINT LIABILITY

10. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3) to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010). On reason that the IWC defined “employer” in terms of exercising control was to reach situations in which multiple entities control different aspects of the employment relationship.

1 Supervision of the work, in the specific sense of exercising control over how services are properly
2 performed, is properly viewed as one of the “working conditions” mentioned in the wage order. *Id.*
3 at 76. A joint employer relationship exists when one entity (such as a temporary employment
4 agency) hires and pays a worker, and the other entity supervises the work. *Id.*

5 11. During Plaintiff’s assignment with Defendants TSC, Virgin Galactic and Talentscale,
6 Plaintiff and the similarly situated aggrieved employees were jointly employed by these Defendants
7 for purposes of the Wage Orders, under the alternative definitions of “to employ” adopted by the
8 California Supreme Court in *Martinez*, supra. As discussed below, both of these Defendants (1)
9 exercised control over wages, hours and working conditions of Plaintiff and the similarly situated
10 aggrieved employees; (2) suffered or permitted Plaintiff and the similarly situated aggrieved
11 employees to work for them; and, (3) engaged Plaintiff and the similarly situated aggrieved
12 employees to work for them.

13 12. In particular, Defendant Talentscale hired Plaintiff and entered into a written employment
14 agreement with him. During his employment, Talentscale maintained control over many aspects of
15 Plaintiff’s employment, including, among other things, having the authority to discipline him,
16 change his job assignment, change his work hours, change his rates of pay, and to terminate his
17 employment.

18 13. In addition, when he was first hired, Defendant Talentscale provided Plaintiff with
19 orientation and training materials. Defendant Talentscale issued Plaintiff written policies concerning
20 his meal periods, rest breaks, timekeeping, hours worked, and payment of his wages, with which
21 Plaintiff was required to comply. Among other things, these policies provided that Plaintiff’s weekly
22 time cards be submitted to Defendant Talentscale; and, Defendant Talentscale was supposed to
23 process his time cards and pay him for all hours he worked. Defendant Talentscale exercised
24 ultimate control over the payment of Plaintiff’s wages, as Defendant Talentscale issued Plaintiff his
25 paychecks. Finally, Defendant Talentscale directed Plaintiff to comply with all of Defendants TSC’s
26 and Virgin Galactic’s policies and directions when he was assigned to work at TSC and Virgin
27 Galactic. Plaintiff is informed and believes that Defendant Talentscale exercised the same control
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1 over, applied the same policies and practices, and engaged in the same acts and omissions with
2 regard to the other similarly situated aggrieved employees.

3 14. Defendants TSC and Virgin Galactic similarly suffered or permitted Plaintiff to work for
4 them or engaged Plaintiff to work for them. Plaintiff is informed and believes that Defendants TSC
5 and Virgin Galactic entered into a written agreement with Defendant Talentscale, pursuant to which
6 Defendants TSC and Virgin Galactic paid Defendant Talentscale to provide it with workers,
7 including Plaintiff, to conduct Defendants TSC's and Virgin Galactic's joint business operations.
8 Defendants TSC and Virgin Galactic suffered or permitted Plaintiff to work at TSC and Virgin
9 Galactic for the entirety of his tenure.

10 15. During his assignment, Defendants TSC and Virgin Galactic further exercised control over
11 Plaintiff's wages, hours and working conditions. Among other things, Defendants TSC and Virgin
12 Galactic: (1) set Plaintiff's work hours and provided him with his work schedule; (2) provided
13 Plaintiff with written policies regarding his meal periods and rest breaks, with which Plaintiff was
14 required to comply; (3) directly supervised Plaintiff's work through its employees; (4) assigned
15 Plaintiff his job duties and trained him on his job duties; (5) reprimanded and counseled Plaintiff
16 regarding his work performance and other issues; (6) exercised authority to end Plaintiff's work
17 assignment at any time, which essentially equated to a termination of employment as Talentscale
18 did not guarantee other job assignments; (7) required Plaintiff to use its timekeeping system for
19 purposes of recording his time; (8) determined if and when Plaintiff would receive meal periods and
20 rest breaks; (9) subjected Plaintiff to unlawful schedules for taking meal periods and rest breaks;
21 (11) subjected Plaintiff to its rounding of the time clock policy and alternative workweek policy and
22 practice where he was not paid for overtime after the eighth hour of work; and, (12) was responsible
23 for recording when Plaintiff began and ended his shifts. Defendants TSC and Virgin Galactic issued
24 further written policies and practices and guidelines governing Plaintiff's working conditions with
25 which he was required to comply. Plaintiff is informed and believes that Defendants TSC and Virgin
26 Galactic exercised the same control over, applied the same policies and practices, and engaged in
27 the same acts and omissions with regard to the other similarly situated aggrieved employees.
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1 **DEFENDANTS' TSC & VIRGIN GALACTIC'S LIABILITY UNDER CALIFORNIA**

2 **LABOR CODE SECTION 2810.3**

3 16. California Labor Code section 2810.3(b)(1) provides that “a client employer shall share with
4 the labor contractor all civil legal responsibility and civil liability for all workers supplied by that
5 labor contractor for . . . the payment of wages.” A “labor contractor” means “an individual or
6 entity that supplies, either with or without a contract, a client employer with workers to perform
7 labor within the client employer’s usual course of business.” Cal. Labor Code § 2810.3(a)(3). A
8 “client employer” is “a business entity, regardless of its form, that obtains or is provided workers to
9 perform labor within its usual course of business from a labor contractor.” Cal. Labor Code §
10 2810.3(a)(1)(A). Client employers do not include a business entity with a workforce of fewer than
11 twenty-five workers or with five or fewer workers provided by a labor contractor or labor contractors
12 to the client employer at any time. Cal. Labor Code § 2810.3(a)(1)(B). “Usual course of business”
13 means “the regular and customary work of a business, performed within or upon the premises or
14 worksite of the client employer.” Cal. Labor Code § 2810.3(a)(6).

15 17. Defendant Talentscale is a “labor contractor” in that it supplies a client employers,
16 Defendants TSC and Virgin Galactic, with workers to perform labor within the Defendants TSC’s
17 and Virgin Galactic’s usual course of business, namely the creation of technology for Virgin
18 Galactic's Virgin SpaceShip program.

19 18. Defendants TSC and Virgin Galactic are each a “client employer” as each obtains or is
20 provided workers to perform labor within its usual course of business from labor contractors,
21 including Defendant Talentscale. Defendants TSC and Virgin Galactic each have a workforce of
22 more than twenty workers and each is supplied with at least five workers from a labor contract at
23 any given time.

24 19. Under California Labor Code Section 2810.3, Defendants TSC and Virgin Galactic, client
25 employers, share with the labor contractor, Defendant Talentscale, all civil legal responsibility and
26 civil liability for all workers supplied by that labor contractor for the payment of wages.

27 20. Plaintiff complied with Labor Code Section 2810.3 by mailing certified a letter outlining the
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1 substance of the allegations alleged herein to the “Client Employer,” namely Defendants TSC and
2 Virgin Galactic, thirty (30) days before filing suit. Kern County, California, because Defendants do
3 business in Kern County, California, and some of the complained of conduct occurred in this judicial
4 district.

5 **THE “AGGRIEVED EMPLOYEES”**

6 21. Plaintiff brings this action on behalf of himself and all other similarly situated aggrieved
7 employees. The similarly situated aggrieved employees shall be defined as follows: “All hourly
8 paid, non-exempt workers who were directly and/or jointly employed by Defendant TSC, including
9 all hourly paid, non-exempt individuals who were employed by Defendant Talenscale and/or
10 Defendant Virgin Galactic and assigned to work at a TSC location, in California at any time within
11 the one year and sixty-five days prior to the filing of the initial complaint.”

12 **FACTUAL ALLEGATIONS**

13 22. During the four-year period preceding filing of this complaint, Plaintiff and each of the
14 similarly situated aggrieved employees were jointly employed Defendant in the State of California
15 as non-exempt, hourly paid workers. Defendant at all times exercised control over Plaintiff and each
16 of the similarly situated aggrieved employees, and suffered and/or permitted them to work.

17 23. Plaintiff was hired by Defendant Talentscale on or about November 21, 2019, and was
18 immediately assigned to work for Defendant TSC and Defendant TSC’s facility

19 24. Plaintiff typically worked an alternative workweek schedule of four shifts per workweek
20 with each shift lasting at least 10 hours and some lasting in excess of 10 hours.

21 25. Plaintiff was at times unable to take timely, thirty-minute uninterrupted meal periods and/or
22 had their meal periods cut short due to the pressures from the job and lack of relief workers
23 availability, commentary from superiors or no breaks at all. This interrupted, missed and/or late
24 meal periods are generally reflected in the time-keeping records for Plaintiff. Plaintiff also never
25 received a second meal period when working shifts in excess of 10 hours. Plaintiff did not receive
26 premium pay for all of these interrupted, missed and/or late meal periods.

27 26. Plaintiff was at times unable to take timely rest periods, and was required to work through
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1 and/or cut short her rest periods, due to the nature of the business. Plaintiff was never afforded a
2 third rest period on shifts in excess of 10 hours, and did not receive premium pay for all of these
3 missed, late or interrupted rest periods. Plaintiff was also not permitted to leave the premises during
4 his rest periods, resulting in an on-duty rest period, and did not receive premium pay for all of these
5 on-duty rest periods.

6 27. Plaintiff regularly worked time for which they were not compensated by Defendants at a rate
7 no less than the prevailing minimum wage. Specifically, upon information and belief, Defendants
8 implemented a time rounding system that systematically deprived Plaintiff of compensable hours
9 worked because it resulted in understating hours worked due to the rounding.

10 28. Defendants paid Plaintiff non-discretionary remunerations, including but not limited to per
11 diem pay based on hours worked. Defendants failed to incorporate said non-discretionary
12 remunerations into the regular rate of pay for purposes of calculating his overtime, resulting in an
13 underpayment of overtime.

14 29. Additionally, Defendants failed to properly accrue and pay sick leave time benefits and/or
15 incorporate said non-discretionary remunerations into Plaintiff's sick leave time benefits, resulting
16 in each underpayment of sick leave time benefits.

17 30. Defendants regularly scheduled Plaintiff to work four shifts per workweek each lasting ten
18 hours. Defendants did not pay Plaintiff overtime and double time wages during these shifts for any
19 work performed in excess of eight hours. Defendants failed to properly adopt an alternative
20 workweek election pursuant to Labor Code §511 and the IWC Wage Order(s) applicable to these
21 shifts, and as a result, Defendants significantly underpaid Plaintiff his overtime wages owed.

22 31. Plaintiff was not paid for all time spent working and/or under Defendants' control. Plaintiff
23 as subjected to Defendants' time rounding policy and practice, which resulted in a significant net
24 underpayment to Plaintiff and benefit to Defendants. Plaintiff was also required to walk long
25 distances across events to clock in and out for their shifts and meal periods without being
26 compensated for this time spent walking.

27 32. Plaintiff and the similarly situated aggrieved employees also were required to use their own
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1 vehicles to travel to business-related locations, but Defendants failed to reimburse them properly
2 for mileage and/or the use of personal vehicles and other reasonably necessary business expenses,
3 such as lodging, meals and/or use of personal cell phones.

4 33. During his employment, Plaintiff failed to receive accurate wage statements in compliance
5 with Labor Code section 226. Among other things, Plaintiff's paystubs did not accurately reflect,
6 interalia, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates
7 in effect during each pay period and all hours worked at each applicable hourly. Accordingly,
8 Defendants have violated Labor Code section 226 as to Plaintiff.

9 34. Plaintiff's employment with Defendants ended on November 16, 2019, yet Plaintiff's final
10 payroll check, dated November 22, 2019, was not timely provided to Plaintiff. Defendants failed to
11 pay Plaintiff for all hours worked during her employment and upon the separation of employment
12 as a result of Defendant's unlawful rounding policies and practices, as well as its failure to
13 compensate Plaintiff for all overtime hours, as described herein.

14 35. Plaintiff and Defendants executed an employment agreement which set forth that any
15 overtime compensation would be calculated using \$35.00 per hour as the overtime rate of pay.
16 However, Defendants breached their written employment agreement with Plaintiff by only
17 compensating him at an overtime rate of pay of \$22.50 per hour.

18 36. Plaintiff is informed and believes that Defendant TSC engaged in these same herein
19 described unlawful practices with regard to all of the Similarly situated aggrieved employees, and
20 that Defendants applied these same herein described unlawful practices to all of its employees that
21 it applied to Plaintiff, regardless of whether the Similarly situated aggrieved employee was assigned
22 to work for Defendant TSC by Defendant Talentscale, Defendant Virgin Galactic or any other
23 temporary/staffing agency, or directly hired by Defendant.

24 37. Plaintiff is informed and believes that Defendant engaged in these same unlawful practices
25 with regard to all of the similarly situated aggrieved employees.

26 38. Plaintiff brings his complaint under the Private Attorneys General Act of 2004, Labor Code
27 sections 2698, et seq., ("PAGA"), as a representative action on behalf of the State of California,
28 regarding violations of the Labor Code as to all similarly aggrieved individuals employed by

1 Defendants in the State of California as a non-exempt employee. This action is brought solely
2 pursuant to PAGA and seeks no relief beyond that available under PAGA.

3 39. During the period beginning one-year period preceding the filing of the required PAGA
4 notice with the Labor Workforce and Development Agency, and continuing through the present, as
5 alleged herein, Defendants violated Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 225.5,
6 226, 226.3, 226.7, 233, 234, 245, 246, 247, 247.5, 248, 248.5, 510, 511, 512, 558, 558.1, 1024.5,
7 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, 2802, 2810.5 and all relevant
8 sections of the applicable IWC Wage Order(s) as to Plaintiff and all other similarly aggrieved
9 employees employed by Defendants in any non-exempt position, however titled. These violations
10 subject Defendants to civil penalties as set forth in the foregoing statutes as well as other provisions
11 of the Labor Code, including without limitation Labor Code sections 203, 256, 210, 558, 558.1,
12 1174.5, 1197.1 and 2699

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**
15 **LABOR CODE SECTIONS 2698, ET SEQ.**

16 40. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

17 41. California law provides employees in California must be paid for all hours worked, up to 40
18 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. As alleged
19 herein, Plaintiff and the similarly situated aggrieved employees regularly worked hours for which
20 they were not compensated by Defendants as required by California law. They were subjected to
21 Defendants' unlawful time rounding policy and practice which resulted in a significant net
22 underpayment to Plaintiff and benefit to Defendants, and were occasionally interrupted during their
23 meal periods and asked to do work for which they were not compensated. They were also required
24 to walk long distances across events to clock in and out for their shifts and meal periods without
25 being compensated for this time spent walking. Defendant owes Plaintiff and similarly situated
26 aggrieved employees at least minimum wage for this time hours worked, resulting in unpaid wages.

27 42. These minimum wage violations subject Plaintiff and the aggrieved employees to civil
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1 penalties under Labor Code sections 558, 558.1, 1197.1 and Section 20 of all applicable wage
2 orders. Each violation of each Labor Code section and Wage Order provision results in a *separate*
3 civil penalty, for each aggrieved employee, for each pay period during which the referenced statutes
4 and Wage Order provisions were violated.

5 43. California law provides employees in California must be paid overtime, equal to 1.5 times
6 the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day, and
7 must be paid double wages for all hours worked in excess of 12 per day, unless they are exempt.

8 44. Labor Code §511(a) states in pertinent part: "Upon the proposal of an employer, the
9 employees of an employer may adopt a regularly scheduled alternative workweek that authorizes
10 work by the affected employees for no longer than 10 hours per day within a 40-hour workweek
11 without the payment to the affected employees of an overtime rate of compensation pursuant to this
12 section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it
13 receives approval in a secret ballot election by at least two-thirds of affected employees in a readily
14 identifiable work unit. The regularly scheduled alternative workweek proposed by an employer for
15 adoption by employees may be a single work schedule that would become the standard schedule for
16 workers in the work unit, or a menu of work schedule options, from which each employee in the
17 unit would be entitled to choose."

18 45. Labor Code §511(e) states: "The results of any election conducted pursuant to this section
19 shall be reported by an employer to the Division of Labor Standards Enforcement within 30 days
20 after the results are final."

21 46. Labor Code §511(b) states in pertinent part: "An affected employee working longer than
22 eight hours but not more than 12 hours in a day pursuant to an alternative workweek schedule
23 adopted pursuant to this section shall be paid an overtime rate of compensation of no less than one
24 and one-half times the regular rate of pay of the employee for any work in excess of the regularly
25 scheduled hours established by the alternative workweek agreement and for any work in excess of
26 40 hours per week. An overtime rate of compensation of no less than double the regular rate of pay
27 of the employee shall be paid for any work in excess of 12 hours per day and for any work in excess
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1 of eight hours on those days worked beyond the regularly scheduled workdays established by the
2 alternative workweek agreement.”

3 47. Defendants scheduled Plaintiff and the similarly situated aggrieved employees to work using
4 an alternative workweek schedule of four 10 hour shifts per week (“4/10”), yet failed to comply
5 with the requirements set forth in Labor Code §511 and the IWC Wage Order(s) for legal alternative
6 workweek schedules with regard to Plaintiff and the similarly situated aggrieved employees. As
7 such, Defendants failed to pay Plaintiff and the similarly situated aggrieved employees legal
8 overtime compensation for all work accomplished in excess of eight (8) hours per day and/or forty
9 (40) hours per week.

10 48. Further, as alleged herein, Plaintiff and the Similarly situated aggrieved employees were
11 subjected to unlawful time rounding policy, and were required to perform off-the-clock work, such
12 as walking long distances to clock in and out for their shifts and meal periods, and were at times
13 interrupted during their meal periods and asked to do work for which they were not compensated.

14 49. Plaintiff and the similarly situated aggrieved employees were also not paid at the proper
15 overtime and double time rate of pay as a result of Defendants failure to properly blend multiple
16 rates of pay and/or incorporate all non-discretionary pay renumerations into the regular rate for
17 purposes of calculating overtime and double time.

18 50. Defendants also failed to incorporate these non- discretionary renumerations into the regular
19 rate for purposes of calculating Plaintiff’s and the similarly situated aggrieved employees sick leave
20 pay rate.

21 51. Defendants’ failure to compensate Plaintiff and the similarly situated aggrieved employees
22 for all hours worked, including overtime hours, violates Labor Code sections 510, and all applicable
23 Wage Orders, section 3. These violations subject Defendants to civil penalties under the Labor Code,
24 including without limitation sections 558, 558.1, 510 and 2699, and section 20 of all applicable
25 wage orders. Each violation of each Labor Code section and Wage Order provision, for each
26 aggrieved employee, results in a separate civil penalty.

27 52. Under the Labor Code and IWC Wage Orders, Defendants were required to provide Plaintiff
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1 and the similarly situated aggrieved employees with one 30-minute meal break free from all duties
2 for all shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all
3 shifts longer than 10 hours. Meal periods can be waived, but only under the following circumstances:
4 (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours,
5 the required meal period may be waived by mutual consent of the employer and employee, and (2)
6 if an employee's total work period in a day is over ten (10) hours but no more than twelve (12)
7 hours, the required second meal period may be waived by mutual consent of the employer and
8 employee, but only if the first meal period was not waived. Employers covered by the Wage Orders
9 have an obligation to both (1) relieve their employees for at least one meal period for shifts over
10 five hours (see above), and (2) to record having done so. If the employer fails to properly record a
11 valid meal period, it is presumed no meal period was provided.

12 53. Plaintiff and similarly situated aggrieved employees regularly worked periods of more than
13 five and ten hours in a workday without being provided proper mandatory thirty-minute, duty-free
14 meal periods. Upon information and belief, Defendant failed to maintain a company meal period
15 policy compliant with California law. Plaintiff and similarly situated aggrieved employees were
16 regularly unable to take timely, thirty-minute uninterrupted first meal periods, and were never
17 provided with second meal periods. They were unable to avail themselves of such breaks for various
18 reasons, including, the pressures from their workloads and the lack of relief workers available,
19 commentary from superiors or no breaks at all. Defendants regularly and routinely failed to provide
20 Plaintiff and other similarly situated aggrieved employees with a second meal period regardless of
21 the number of hours they worked. Per Defendant's illegal meal period policy/practice, Plaintiff and
22 similarly situated aggrieved employees were not always relieved of their duties or at times permitted
23 to leave the premises for purposes of taking meal periods. Defendant also failed to pay Plaintiff and
24 similarly situated aggrieved employees an additional hour of wages at their regular rates of pay for
25 each workday a meal period was not provided.

26 54. Defendants' failure to provide compliant timely, off-duty, thirty-minute meal periods, and
27 failure to pay a corresponding additional hour of wages for meal period premiums, to Plaintiff and
28 other similarly aggrieved employees violates Labor Code sections 512, 226.7, and Wage Order 5-

1 2001, section 11. These violations subject Defendants to civil penalties under the Labor Code,
2 including without limitation sections 558, 558.1, 226.7 and 2699, and section 20 of all applicable
3 wage orders. Each violation of each Labor Code section and Wage Order provision, for each
4 aggrieved employee, results in a separate civil penalty.

5 55. California law requires an employer to authorize or permit an employee to take a rest period
6 of ten minutes for every four hours worked, or major fraction thereof, and such rest periods must be
7 in the middle of the four-hour period insofar as practicable. If the employer fails to provide any
8 required rest periods, or fails to provide a fully compliant rest break of 10 minutes whimein the
9 employee is fully relieved of all duties and all employer control, the employer must pay the
10 employee one hour of pay at the employee's regular rate of compensation for each workday the
11 employer did not provide a legally required and/or fully compliant rest period.

12 56. Defendant employed policies and procedures that ensured Plaintiff and other similarly
13 situated aggrieved employees would not receive all legally required rest periods, as Defendants did
14 not authorize and permit all required rest periods in strict accordance to, and in compliance with,
15 the timing requirements of all applicable Wage Orders. Defendant similarly employed policies and
16 procedures that rendered rest periods non-compliant with the requirements of California law by,
17 *inter alia*, only providing Plaintiff and similarly situated aggrieved employees with a maximum of
18 two rest breaks per shift regardless of the number of hours worked, and failing to relieve Plaintiff
19 and similarly situated aggrieved employees of all duties and all employer control. Plaintiff and
20 similarly situated aggrieved employees regularly worked enough hours to be entitled to three rest
21 breaks in a shift but Defendants only provided Plaintiff and similarly situated aggrieved employees
22 with one or two rest breaks regardless of the number of hours they worked. Similar to meal breaks,
23 Plaintiff and the similarly situated aggrieved employees were not always able to avail themselves
24 of their rest breaks for various reasons, including, the pressures from their workloads and the lack
25 of relief workers available, commentary from superiors or no breaks at all. Per Defendant's illegal
26 meal period policy/practice, Plaintiff and similarly situated aggrieved employees were not always
27 relieved of their duties or permitted to leave the premises for purposes of taking rest periods.
28 Defendants further employed policies and procedures ensuring Plaintiff and similarly situated

1 aggrieved employees did not receive premium wages to compensate them for workdays they did not
2 receive all legally required and fully compliant rest periods.

3 57. Defendant failed to provide Plaintiff and the similarly situated aggrieved employees with all
4 required rest periods, or with compensation in lieu thereof. Defendants' failure to provide compliant
5 off-duty rest periods, and failure to pay a corresponding additional hour of wages for rest period
6 premiums, to Plaintiff and other similarly aggrieved employees violates Labor Code sections 512,
7 226.7, and Wage Order 5-2001, section 11. These violations subject Defendants to civil penalties
8 under the Labor Code, including without limitation sections 558, 558.1, 226.7 and 2699, and section
9 20 of all applicable wage orders. Each violation of each Labor Code section and Wage Order
10 provision, for each aggrieved employee, results in a separate civil penalty.

11 58. Labor Code § 2802 requires employers to indemnify employees for all necessary
12 expenditures incurred by employees in the discharge of their duties.

13 59. As alleged herein, Plaintiff and the similarly situated aggrieved employees regularly incurred
14 expenses including, inter alia, automobile mileage, lodging, meals and related expenses, in the
15 performance of their job duties, which expenses were not fully reimbursed by Defendants.

16 60. Defendants required Plaintiff and the similarly situated aggrieved employees to use personal
17 cell phones tofor scheduling, coordination and communication throughout their shifts and/or prior
18 to the start or after the close of their shifts. Defendants did not reimburse Plaintiff or the similarly
19 situated aggrieved employees for using personal cell phones for work.

20 61. In failing indemnify all business-related expenses incurred by Plaintiff and the aggrieved
21 employees, Defendants have violated Labor Code section 2802. This violation subjects Defendants
22 to civil penalties under Labor Code sections 2802, 558, 558.1 and 2699. Each violation of each
23 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
24 civil penalty.

25 62. Defendants failed to provide paid sick leave to Plaintiff and similarly aggrieved employees,
26 further failing to put them on notice of their paid sick leave rights—or thereby putting their
27 entitlement to sick leave in a Labor Code Section 2810.5 notice. In addition, Defendants failed to
28 maintain accurate records of used sick leave and the balance of paid sick leave left to the employee

1 throughout the relevant time period. Notably, where an employer compensates an employee with
2 non-discretionary bonus pay (as Defendants did here), any sick leave/sick pay calculation must
3 incorporate the value of the non-discretionary bonuses; upon information and belief, Defendants'
4 sick leave/sick pay calculation did not. Additionally, Defendants failed to provide notice of the
5 correct sick leave amount balance left for Plaintiff and aggrieved employees, and thus affecting their
6 intelligent exercise of their paid sick leave. But for this failure, Plaintiff and similarly aggrieved
7 employees would have used their paid sick leave at least prior to their respective separation, for as
8 on several occasions thereafter, he or she would have been entitled to use the banked sick leave and
9 earn appropriate compensation. This illegal retention of paid sick leave is unlawful and Plaintiff
10 seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law,
11 on behalf of herself and all aggrieved employees.

12 63. An Employer is required to provide paid sick days in accordance to Labor Code Section 245
13 through 248.5. Defendants failed to maintain accurate records documenting the hours worked and
14 paid sick days accrued and used by employees in violation of Labor Code Section 247.5, permitting
15 the presumption that Plaintiff was entitled to the maximum number of hours accruable under this
16 article at the time of her termination. Moreover, by not incorporating the additional rates of pay/non-
17 discretionary remunerations, including but not limited to additional rates of pay/shift differentials
18 and bonuses/incentive pays, into the sick leave rates of pay, Defendants unlawfully retained and
19 continue to retain paid sick leave that should have been paid and wasn't. On information and belief,
20 Plaintiff alleges that all of these practices were experienced and continue to be experienced by other
21 similarly aggrieved employees. Plaintiff requests all appropriate relief under the PAGA and these
22 statutes, including but not limited to the restitution of earned paid sick leave pay that was not paid
23 to the aggrieved employees due to Defendants' sole failure to incorporate all non-discretionary
24 remunerations/rates of pay into the regular rate for calculating sick leave pay benefits as required
25 by California law.

26 64. Accordingly, Defendants has violated Labor Code sections 233 and 234 as to Plaintiff and
27 all similarly aggrieved employees. These violations subject Defendants to civil penalties under the
28 Labor Code, including without limitation Labor Code Section 233 and 234 and 2699. Each violation

1 of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a
2 separate civil penalty.

3 65. Labor Code section 226(a) provides, in relevant part, that “[a]n employer, semimonthly or
4 at the time of each payment of wages, shall furnish to his or her employee, either as a detachable
5 part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by
6 personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned,
7 (2) total hours worked by the employee . . . , (5) net wages earned, [and] (6) the inclusive dates of
8 the period for which the employee is paid . . . , (8) the name and address of the legal entity that is
9 the employer . . . , (9) all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee”

11 66. Labor Code section 226(e) provides that “[a]n employee suffering injury as a result of a
12 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
13 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
14 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
15 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
16 costs and reasonable attorney’s fees.

17 67. Labor Code section 226.3 provides that “[a]ny employer who violates subdivision (a) of
18 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
19 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
20 violation in a subsequent citation, for which the employer fails to provide the employee a wage
21 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

22 68. Defendant knowingly and intentionally failed to provide Plaintiff and other class members
23 with proper, itemized wage statements as the wage statements provided by Defendants do not
24 accurately reflect, inter alia, gross wages earned, total hours worked, net wages earned, all applicable
25 hourly rates in effect during each pay period, all hours worked at each applicable hourly rate.
26 Accordingly, Defendants have violated Labor Code sections 226(a) and/or 226(e) as

27 69. Plaintiff and all similarly aggrieved employees. These violations subject Defendants to civil
28

1 penalties under the Labor Code, including without limitation Labor Code sections 226, 226.3 and
2 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved
3 employee, results in a separate civil penalty.

4 70. Labor Code section 204 requires employers to pay all wages (other than those mentioned in
5 Labor Code sections 201, 201.3, 202, 204.1, or 204.2) earned by any person in any employment
6 twice during each calendar month, on days designated in advance by the employer as the regular
7 paydays. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer
8 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
9 immediately.”

10 71. California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee not
11 having a written contract for a definite period quits his or her employment, his or her wages shall
12 become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
13 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
14 wages at the time of quitting.”

15 72. Labor Code section 201 requires employers to pay all wages earned and unpaid at the time
16 of discharge, immediately upon discharge. Labor Code section 202 states similar provisions with
17 respect to employees who resign. For all aggrieved employees no longer employed by Defendants,
18 including Plaintiff, Defendants still have not paid such aggrieved employees all wages earned and
19 unpaid at the time of discharge as alleged herein. These violations subject Defendants to civil
20 penalties under the Labor Code, including without limitation Labor Code sections 203, 256 and
21 2699. Each violation results in a separate civil penalty, for each aggrieved employee for each pay
22 period during which the statutory provisions were violated.

23 73. Labor Code section 216 declares unlawful an employer’s refusal to pay wages due and
24 payable and/or denial of the validity of any claim to wages due. Defendants violated/violates this
25 section by failing to pay Plaintiff and aggrieved employees for all hours worked at the proper wage
26 rate and by failing to pay Plaintiff and aggrieved employees an additional hour of pay for each
27 meal/rest period not provided/that was invalid. These violations subject Defendants to civil penalties
28

1 under Labor Code section 225.5. Each violation results in a separate civil penalty, for each aggrieved
2 employee, for each pay period during which the statute provisions were violated.

3 74. Defendant failed to pay Plaintiff and the similarly situated aggrieved employees all wages
4 that were due and owing during their employment; and, failed to Plaintiff and the similarly situated
5 aggrieved employees who are former employees all wages that were due and owing upon
6 termination or resignation. Among other things, Plaintiff and the similarly situated aggrieved
7 employees were not paid at the proper overtime rate of pay, were not paid for all overtime hours
8 worked due to its unlawful alternative workweek schedule, and were not paid all minimum wages
9 owed due to Defendant's unlawful time rounding and off-the-clock policies and practices.
10 Defendants also systematically pays final wages at the end of the final pay period rather than on
11 the final day of work or the statutorily mandated time to pay final wages under California law. Thus,
12 Plaintiff and the similarly situated aggrieved employees therefore seeks separate civil penalties based
13 on the foregoing.

14 75. California Labor Code sections 226 and 1174-75 require an employer to keep accurate
15 records of all hour an employee works.

16 76. California Labor Code section 1174.5 provides that "[a]ny person employing labor who
17 willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
18 complete records required by subdivision (d) of Section 1174 . . . shall be subject to a civil penalty
19 of five hundred dollars (\$500)."

20 77. Section 7(A)(3) of the IWC Wage Orders similarly requires an employer to keep accurate
21 records showing the when an employee begins and end each work period and meal period.

22 78. Plaintiff is informed and believes that Defendant failed to maintain accurate records in
23 compliance with these statutes. Among other things, Defendant failed to record the off-the-clock
24 time that Plaintiff and the similarly situated aggrieved employees were required to work.

25 79. These violations subject Defendants to civil penalties under the Labor Code, including
26 without limitation sections 1174.5 and 2699. Each violation of each Labor Code section and Wage
27 Order provision, for each aggrieved employee, results in a separate civil penalty.

28 80. Labor Code section 204 requires that all earned wages must be paid to employees twice

1 during each calendar month. Defendants violated this section by failing to pay Plaintiff and
2 aggrieved employees an additional hour of pay for meal and rest periods not provided/valid, by
3 failing to compensate employees for all hours worked, including overtime hours worked, and by
4 failing to pay proper premium wage rates for all hours worked. These violations subject Defendants
5 to civil penalties under Labor Code section 210. Each violation results in a separate civil penalty,
6 for each aggrieved employee for each pay period during which the statute provisions were violated.

7 81. Labor Code section 216 declares unlawful an employer's refusal to pay wages due and
8 payable and/or denial of the validity of any claim to wages due. Defendants violated/violates this
9 section by failing to pay Plaintiff and aggrieved employees for all hours worked at the proper wage
10 rate and by failing to pay Plaintiff and aggrieved employees an additional hour of pay for each
11 meal/rest period not provided/that was invalid. These violations subject Defendants to civil penalties
12 under Labor Code section 225.5. Each violation results in a separate civil penalty, for each aggrieved
13 employee, for each pay period during which the statute provisions were violated.

14 82. California Labor Code section 223 makes it unlawful for an employer to secretly pay
15 wages lower than required by statute while purporting to pay legal wages. As described above,
16 Defendants willfully and systematically denied Plaintiff and other aggrieved employees minimum
17 wage compensation for all hours worked which resulted in the payment of less than statutorily
18 required wages to them. Defendants acted with the intent to deprive them of statutory wages,
19 including, but not limited to, overtime wages and minimum wages, to which they were entitled to
20 under California law.

21 83. Thus, Defendants paid Plaintiff and other aggrieved employees lower wages than those
22 they were entitled to while purporting that Plaintiff and other aggrieved employees were properly
23 paid. California law requires employers to keep "accurate and complete" payroll records showing,
24 among other things, the hours worked daily by all non-exempt employees. IWC Wage Order 5-
25 2001, section 7, similarly requires employers to keep time records showing, inter alia, when the
26 employees begin and end each work period.

27 84. Together, Labor Code sections 1198 and 1199 make unlawful employment of any
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1 individual under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
2 neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections
3 1174, 1197, and 1198, or other order or ruling of the IWC. Defendants' violations with respect to
4 meal periods, rest periods, recordkeeping provisions, and minimum wages and/or overtime wages,
5 as alleged herein, result in separate violations of Labor Code sections 1198 and 1199, and subject
6 Defendants to civil penalties under the Labor Code, including without limitation Labor Code
7 sections 1197.1 and 2699. Each violation of each Labor Code section and Wage Order provision,
8 for each aggrieved employee, results in a separate civil penalty.

9 85. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections
10 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and Workforce
11 Development Agency ("LWDA") via its online portal located at the website url
12 <https://dir.tfaforms.net/295> on August 18, 2020 and to Defendant on the same date via certified mail
13 of the specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts
14 and theories to support the alleged violations.

15 86. Under Labor Code section 2699.3, the LWDA must give written notice by certified
16 mail to the parties it intends to investigate the alleged violations within 65 days of the date of the
17 Plaintiff's written notice. As of the expiration of the statutory exhaustion period, the LWDA has not
18 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of herself
19 and other similarly aggrieved employees. As of the date of this Complaint, no Defendant has
20 responded to Plaintiff's PAGA notices in an attempt to cure. Accordingly, Plaintiff has exhausted
21 all administrative remedies required by law.

22 87. Under the provisions of PAGA and Labor Code sections 201, 202, 203, 204, 210,
23 216, 218.5, 225.5, 226, 226.3, 226.7, 233, 234, 245, 246, 247, 247.5, 248, 248.5, 256, 510, 511, 512,
24 558, 558.1, 1024.5, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, 2802,
25 2810.5 and all applicable Wage Orders, as well as all interpretations of these laws by California
26 Courts and administrative bodies, as well as any other law that is enforceable through PAGA,
27 Defendants are liable for all statutorily-specified penalties recoverable under PAGA as enumerated
28 in the relevant California Labor Code provisions listed herein, or for default PAGA penalties under

1 Labor Code Section 2699(f) for any violation of a Labor Code section without a specified civil
2 penalty.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and
5 severally, as follows:

- 6 1. For civil penalties according to proof;
 - 7 2. For reasonable attorney's fees and costs of suit; and
 - 8 3. For such other and further relief as the Court deems just and proper.
- 9

10 Dated: November 23 2020

CROSNER LEGAL, P.C.

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12 _____
13 Blake Jones
14 Zachary Crosner
15 Michael Crosner
16 Attorneys for Plaintiff
17 LAWRENCE HARRIS
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DEMAND FOR JURY TRIAL

Plaintiff, LAWRENCE HARRIS, demands a trial by jury on all claims so triable.

Dated: November 23, 2020

CROSNER LEGAL, P.C.



Blake Jones
Zach Crosner
Michael Crosner
Attorneys for Plaintiff
LAWRENCE HARRIS