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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO – NORTH COUNTY DIVISION**
11

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

14 Plaintiffs,

15 v.

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

18 Defendant.
19
20

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

Assigned for All Purposes to:
Hon. Cynthia A. Freeland, Dept. N-27

FIRST AMENDED COMPLAINT FOR:

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
01/29/2021 at 12:06:00 PM
Clerk of the Superior Court
By Ashley Carini, Deputy Clerk

COMES NOW, Plaintiffs Otis Williams and Barry Tufo ("Plaintiffs"), individually and on behalf of the general public as private attorneys general, hereby assert 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. Plaintiffs bring 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. Plaintiffs bring this suit on behalf of themselves 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. Plaintiffs in their representative capacity seek civil penalties on behalf of
10 themselves and other Aggrieved Employees pursuant to PAGA for Defendant failure to comply
11 with 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs'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 Plaintiffs worked for Defendant in this County and Defendant
8 (i) 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 Plaintiffs 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. Mr. Tufo is an individual domiciled and residing in Orange County, California.
16 Mr. Tufo was employed by Defendant from approximately November 2019 to May 2020 as a
17 Field Service Technician.

18 12. CDIS, Inc. is a Virginia corporation located at 407 Industry Drive, Virginia
19 23661. CDIS's west coast headquarters is located at 4749-C Oceanside Blvd., Oceanside,
20 California 92056. CDIS is a provider of high technology telecommunication infrastructure and
21 cabling services and products with locations in Oceanside and San Clemente, California.

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

27 14. The true names and capacities of Defendant, whether individual, corporate,
28 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to

1 Plaintiffs, who therefore sue Defendant by such fictitious names under Code of Civil Procedure §
2 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
3 capacities of the Defendant designated hereinafter as DOES when such identities become known.

4 15. Plaintiffs are informed and believe, and thereon allege, that the Doe Defendant are
5 the partners, agents, or principals and co-conspirators of Defendant and of each other; that
6 Defendant and the Doe Defendant performed the acts and conduct herein alleged directly, aided
7 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
8 benefits of such acts and conduct, and therefore each of the Doe Defendant is liable to the extent
9 of the liability of the Defendant as alleged herein.

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

19 **FACTUAL ALLEGATIONS**

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

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

26 19. For each point exceeding 480 points per week, Aggrieved Employees were
27 eligible for "overtime" at 1.5 times per point based on their current rate. However, points were
28 not correlated to the number of hours Aggrieved Employees worked. For example, Aggrieved

1 Employees could work 50 hours in a workweek but earn less than 480 points and not receive
2 overtime.

3 20. In addition, Defendant did not pay double time for hours worked in excess of
4 twelve hours per day or eight hours on the seventh consecutive day of work.

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

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

18 23. In addition, CDIS did not separately compensate Aggrieved Employees for rest
19 and recovery periods pursuant to section 226.2.

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

27 25. As a result of CDIS’s policies, as well as the productivity requirements and
28 rigorous work schedules implemented and enforced by CDIS, Plaintiffs and Aggrieved

1 Employees were unable to take off duty rest breaks and was not fully relieved of their duties for
2 rest breaks. On shifts lasting more than four hours, Plaintiffs and Aggrieved Employees were
3 required to perform work as directed by CDIS without receiving a paid rest period for every four
4 hours worked or major fraction thereof as evidenced by daily reports, including a third rest break
5 on shifts lasting more than ten hours as required by law.

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

11 27. Defendant also failed to reimburse Plaintiffs and Aggrieved Employees for all
12 expenses incurred in the discharge of their duties, including but not limited to costs incurred to
13 clean company vehicles and tools necessary to perform their job duties.

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

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

27 **Misclassification**

28 30. For individuals to qualify as exempt employees, California requires that: (1) they

1 perform exempt duties more than 50% of their work time, and (2) they must earn a salary of no
2 less than two times the statute minimum wage for full-time employments.

3 31. CDIS misclassified Filed Service Technician because they did not customarily
4 and regularly exercise discretion and independent judgment in their jobs, nor did they have the
5 ability to hire and fire employees. In fact, a majority, and certainly more than 50%, of their time
6 was spent performing the same duties as Field Service Technicians including installation of
7 video, internet, and phone services and maintenance.

8 32. As a result of CDIS's misclassification of Filed Service Technician Supervisors,
9 CDIS failed to pay minimum wages, failed to pay overtime wages, failed to provide meal
10 periods, failed to authorize and permit rest periods, failed to timely pay wages, and failed to
11 provide accurate itemized wage statements.

12 **Failure to Pay Minimum Wages**

13 33. The point based compensation plan provides for payment of wages to Aggrieved
14 Employees based on purported estimates of time that certain activities should take, not actual
15 hours worked.

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

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

23 36. Aggrieved Employees who were misclassified as exempt were not paid at least
24 minimum wage for all hours worked because they were only paid for 40 hours per week, yet
25 often worked in excess of 40 hours per week.

26 **Failure to Pay Overtime Wages**

27 37. During all relevant periods, both the California Labor Code and pertinent wage
28 orders required that all work performed by an employee in excess of eight (8) hours in any

1 workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any
2 workweek be compensated at one and one-half times the employee's regular rate of pay. In
3 addition, all worked performed by an employee in excess of twelve (12) hours in any workday,
4 or eight (8) hours on the seventh day of work in any workweek be compensated at two times the
5 employee's regular rate of pay.

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

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

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

18 41. In addition, upon information and belief, Defendant failed to include bonus
19 compensation when calculating Aggrieved Employee's overtime regular rate.

20 42. Moreover, Defendant's misclassification of Field Service Technician Supervisors
21 resulted in a failure to pay overtime.

22 **Failure to Provide Meal Periods**

23 43. Pursuant to California Labor Code section 512, an employer may not employ an
24 employee for a work period of more than five hours per day without providing the employee
25 with an uninterrupted meal period of not less than thirty minutes, except that if the total work
26 period per day of the employee is not more than six hours, the meal period may be waived by
27 mutual consent of both the employer and the employee.
28

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

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

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

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

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

18 49. Upon information and belief, Aggrieved Employees did not voluntarily or
19 willfully waive their meal periods.
20

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

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

25 51. If an employer fails to authorize and permit an employee to take a rest period, the
26 employer must pay one additional hour of pay at the employee's regular rate of pay for each
27 workday that the rest period is not provided.
28

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

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

10 54. Defendant did not separately compensate Aggrieved Employees for time spent
11 during rest periods.

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

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

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

18 57. Labor Code section 202(a) states:

19
20
21 If an employee not having a contract for a definite period quits his or her
22 employment, his or her wages shall become due and payable not later than 72
23 hours thereafter, unless the employee has given 72 hours previous notice of his or
24 her intention to quit, in which case the employee is entitled to his or her wages at
25 the time of quitting. Notwithstanding any other provision of law, an employee
26 who quits without providing a 72-hour notice shall be entitled to receive payment
27 by mail if he or she so requests and designates a mailing address. The date of the
28

1 mailing shall constitute the date of payment for purposes of the requirement to
2 provide payment within 72 hours of the notice of quitting.

3
4 58. Plaintiffs are informed and believe that Defendant willfully failed to timely pay
5 all his wages due to Aggrieved Employees who have separated from their employment with
6 Defendant for work performed including wages for “non-productive” time, rest periods, overtime
7 wages, and premium wages for missed rest periods. As a result, CDIS violated Labor Code
8 sections 201 and 202.

9
10 **Failure to Pay Sick Leave**

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

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

16 (2) Paid sick time for nonexempt employees shall be calculated by dividing the
17 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.

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

20 60. Upon information and belief, Defendant paid Aggrieved Employees sick leave
21 using minimum wage and not pursuant to any of the allowable calculations under Labor Code §
22 246(l).

23 61. Defendant’s failure to pay sick leave of at the regular rate further constitutes a
24 failure to timely pay wages pursuant to Labor Code Section 204, 1194, 1197, as well as failure
25 to pay all wages due and owing at the time of separation of employment pursuant to Labor Code
26 Sections 201, 202 and 203.

27 ///

28 ///

1 **Failure to Provide Accurate Itemized Wage Statements**

2 62. California Labor Code § 226 provides an employer must furnish employees with
3 an “accurate itemized” statement in writing showing: “(1) gross wages earned, (2) total hours
4 worked by the employee..., (3) the number of piece rate units earned and any applicable piece
5 rate if the employee is paid on a piece-rate basis, (4) all deductions..., (5) net wages earned, (6)
6 the inclusive dates of the period for which the employee is paid, (7) the legal entity that is the
7 employer..., (8) the name and address of the employer, and (9) all applicable hourly rates in
8 effect during the pay period and the corresponding number of hours worked at each hourly rate
9 by the employee...”

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

15 64. Defendant violated Labor Code § 226.2 by failing to provide itemized wage
16 statements to Aggrieved Employees showing the total hours of compensable rest and recovery
17 periods and non-productive time, and the gross wages earned for those periods during the pay
18 period.

19 65. By failing to keep accurate records and provide accurate itemized wage
20 statements as required by section 226, Defendant has injured Plaintiffs and Aggrieved
21 Employees by making it confusing and difficult to calculate the unpaid wages and losses and
22 expenditures (including wages, interest, and penalties thereon) due to Aggrieved Employees.

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

24 66. Pursuant to Labor Code § 204(a), “[a]ll wages, ..., earned by any person in any
25 employment are due and payable twice during each calendar month, on days designated in
26 advance by the employer as the regular paydays. Labor performed between the 1st and 15th
27 days, inclusive, of any calendar month shall be paid between the 16th and 26th day of the month
28

1 during which the labor was performed, and labor performed between the 16th and the last day,
2 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
3 month.”

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

7 68. CDIS failed to pay Aggrieved Employees all wages owed during the pay period in
8 which the wages were earned in violation of Labor Code § 204 including minimum wage for
9 non-productive time, overtime and double time, as described herein.

10 **Failure to Reimburse Necessary Business Expenses**

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

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

17 71. Defendant did not reimburse Aggrieved Employees or for such expenses.

18 72. Moreover, California Labor Code § 224 prohibits any deduction from an
19 employee’s wages which is not either authorized by the employee in writing or permitted by law.
20 CDIS violated section 224 by unlawfully deducting wages for tools and other equipment without
21 employee’s authorization.
22

23 **CAUSES OF ACTION**

24 **First Cause of Action**

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

27 73. Plaintiffs incorporate by reference each and every paragraph above, and realleges
28 each and every allegation contained above as though fully set forth herein.

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

5 75. 65 days have passed, and no response has been received from the LWDA.
6 Accordingly, the LWDA has permitted Plaintiff Williams to proceed in a representative capacity.

7 76. On November 24, 2020, Plaintiff Tufo gave written notice by online submission
8 to the LWDA, and by certified mail to Defendant of Defendant's violations of numerous
9 provisions of the California Labor Code and the IWC Wage Orders as alleged in this complaint.
10 All fees were paid as required by statute.

11 77. 65 days have passed, and no response has been received from the LWDA.
12 Accordingly, the LWDA has permitted Plaintiff Tufo to proceed in a representative capacity.

13 78. Plaintiffs have exhausted all administrative procedures required of them under
14 Labor Code §§2698, 2699 and 2699.3, and as a result, is justified as a matter of right in bringing
15 forward this cause of action.

16 79. Plaintiffs are an "aggrieved employee" as defined in Labor Code Section 2699(a),
17 as he was employed by Defendant during the statutory period and suffered on or more of the
18 Labor Code violations set forth herein. They seek to recover on behalf of themselves and all
19 other current and former other aggrieved employees of Defendant the civil penalties provided by
20 PAGA, plus reasonable attorney's fees and costs.

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

27 81. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties
28 for which Defendant are liable due to numerous Labor Code violations as set forth in this

1 Complaint.

2 82. Plaintiffs seek to recover the PAGA civil penalties through a representative action
3 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
4 Cal.4th 969. Class certification of the PAGA claims is not required.

5 83. Pursuant to Labor Code section 2698 et seq and 2699(a), Plaintiffs seek to recover
6 civil penalties for which Defendant are liable due to numerous Labor Code and Wage Order
7 violations as set forth in this Complaint.

8 84. Specifically, Plaintiff, on behalf of themselves and the Aggrieved Employees,
9 seek penalties under Labor Code §2699, for, without limitation, the claims set forth herein,
10 including:

- 11 a. Defendant's failure to comply with the requirement of Labor Code §1182.12,
12 1194, 1197, 1198, and Wage Order 7-2001 to pay at least minimum wage for
13 every hour worked;
- 14 b. Defendant's failure to comply with the requirement of Labor Code §510, 1194,
15 1197, 1198, and Wage Order 7-2001 to pay all wages earned including overtime
16 wages at the Aggrieved Employee's regular rate of pay;
- 17 c. Defendant's failure to comply with the requirement of Labor Code §§204 and 210
18 to pay, without condition and within the time set by the applicable article, all
19 wages, or parts thereof;
- 20 d. Defendant's failure to comply with the requirement of Labor Code §225.5 to pay
21 wages due;
- 22 e. Defendant's failure to comply with the requirement of Labor Code §§201 and 202
23 to pay wages due to former employees;
- 24 f. Defendant's failure to comply with the requirement of Labor Code §203 to pay
25 waiting time penalties to former employees;
- 26 g. Defendant's failure to comply with the requirement of Labor Code §226.7, 1198,
27 and IWC Wage Order 7-2001 to authorize and permit ten (10) minute rest breaks;

- 1 h. Defendant's failure to comply with the requirement of Labor Code §226.7, 1198,
2 and IWC Wage Order 7-2001 to pay one hour of premium pay for each statutorily
3 required rest break that was not authorized and permitted;
- 4 i. Defendant's failure to comply with the requirement of Labor Code §226.7, 512,
5 1198, and IWC Wage Order 7-2001 to provide timely, uninterrupted 30 minute
6 off-duty meal periods;
- 7 j. Defendant's failure to comply with the requirement of Labor Code §226.7, 1198,
8 and IWC Wage Order 7-2001 to pay one hour of premium pay for each lawful
9 meal break that was not provided;
- 10 k. Defendant's failure to pay used sick leave under Labor Code section 246(l);
- 11 l. Defendant's failure to provide accurate compliant wage statements under Labor
12 Code section 226;
- 13 m. Defendant's failure to reimburse necessary expenses in violation of Labor Code §
14 2802; and
- 15 n. Defendant's unlawful deduction of wages in violation of Labor Code § 224.
- 16 85. Plaintiffs seek civil penalties for Defendant's violation of Labor Code provisions
17 for which a civil penalty is specifically provided, including but not limited to the following:
- 18 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204, Defendant is
19 subject to a civil penalty in the amount of one hundred dollars (\$100) for the
20 initial violation for each failure to pay each employee and two hundred (\$200) per
21 employee for violations in subsequent pay periods plus 25% of the amount
22 unlawfully withheld.
- 23 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a), Defendant
24 is subject to a civil penalty in the amount of two hundred and fifty dollars (\$250)
25 per aggrieved employee for the initial pay period where a violation occurs and
26 one thousand dollars (\$1,000) per aggrieved employee for violations in
27 subsequent pay periods.
- 28

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

20 86. Further, as a result of the acts alleged hereinabove, Plaintiffs seek penalties under
21 Labor Code §§2698 et seq. and 2699 because of Defendant’s violation of numerous provisions of
22 the California Labor Code and IWC Wage Orders.

23 87. Under Labor Code §2699, Plaintiffs and Aggrieved Employees are entitled to
24 \$100 for any initial violation and \$200 for all subsequent violations of the above-mentioned
25 provisions of the California Labor Code.

26 88. Under Labor Code §2699, Plaintiffs and Aggrieved Employees should be
27 awarded twenty-five percent (25%) of all penalties due under California law, interest, attorneys’
28 fees and costs.

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

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray judgment against Defendant, as follows:

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

8
9 Dated: January 29, 2021

Mitchell J. Murray

Malte L. L. Farnaes, Esq.

Christina M. Lucio, Esq.

Mitchell J. Murray, Esq.

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TUFO, in their representative capacity as private attorney
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