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C-16

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

NICOLAS VILLANI, on behalf of himself
and other similarly-situated and aggrieved
employees,

Plaintiffs,

vs.

ARTECH INFORMATION SYSTEMS
L.L.C., a New Jersey limited liability
company; and DOES 1 through 10, inclusive,

Defendants.

Case No. 30-2021-01187712-CU-OE-CXC

**CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT FOR DAMAGES
AND PENALTIES**

1. Failure to Pay Minimum Wages
2. Failure to Provide Accurate Itemized Wage Statements
3. Failure to Timely Pay Wages Due Upon Separation of Employment
4. Violation of the Unfair Competition Law
5. PAGA Civil Penalties for Failure to Pay Minimum Wages
6. PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements
7. PAGA Civil Penalties for Failure to Timely Pay Wages Due Upon Separation of Employment

DEMAND FOR JURY TRIAL

1 Plaintiff NICOLAS VILLANI (“Plaintiff”), on behalf of himself and other similarly-
2 situated and aggrieved employees, and as a Representative of the State of California’s Labor and
3 Workforce Development Agency, hereby alleges as follows:

4 I. INTRODUCTION

5 1. Plaintiff Nicolas Villani brings this representative and class action against
6 ARTECH INFORMATION SYSTEMS L.L.C. and DOES 1 through 10, inclusive (“Defendants”)
7 for unpaid minimum wages, wage statement violations, waiting time penalties, and unfair business
8 practices during the “Class Period” (from four years before the commencement of this action until
9 the commencement of trial in this matter).

10 2. Plaintiff gave notice of these claims to Defendants and the California Labor and
11 Workforce Development Agency (“LWDA”). There has been no notice of LWDA intervention,
12 nor cure by Defendants. Plaintiff asserts claims for civil penalties as a representative of the State of
13 California, and to the extent permitted by law, on behalf of all aggrieved employees of Defendants.
14 Private Attorneys General Act (“PAGA”), Labor Code §§ 2698 *et seq.*; § 2699.3(a)(2)(C). A true
15 and correct copy of the December 16, 2020 notice, attached as **Exhibit 1**, demonstrates Plaintiff is
16 an aggrieved employee with standing to bring representative claims on behalf of the State, LWDA,
17 and other aggrieved employees.

18 3. Plaintiff seeks to represent all employees of Defendants who suffered one or more
19 of the alleged violations (“aggrieved employees”) during the “PAGA Period” (one year and 65
20 days prior to the commencement of this action until the commencement of trial in this matter).
21 Labor Code §§ 2698, *et seq.*

22 II. JURISDICTION AND VENUE

23 4. Venue as to each Defendant is proper in this judicial district. Code of Civil
24 Procedure § 395. Defendants conduct business in Orange County, and all are within the
25 jurisdiction of this Court for service of process purposes. The unlawful acts alleged have a direct
26 effect on Plaintiff and those similarly-situated and aggrieved within California and Orange County.

27 5. There is no federal question at issue for removal under 28 U.S.C. section 1331, as
28 the issues herein are based solely on California law, including the Labor Code, IWC Wage Orders,

1 Code of Civil Procedure, and Business and Professions Code. The Class Action Fairness Act
2 (“CAFA”), 28 U.S.C. section 1332(d), does not apply because the aggregate amount in
3 controversy does not exceed \$5 million. Alternatively, if CAFA does apply, Plaintiff contends that
4 the exception for local case or controversy applies and prohibits removal of this action to federal
5 court. Plaintiff’s individual claims do not exceed \$75,000, so there is no jurisdiction under 28
6 U.S.C. section 1332(a). Further, as a PAGA action, this matter is not subject to removal under 28
7 U.S.C. sections 1332(a)-(d).

8 **III. PARTIES**

9 6. Nicolas Villani is a California resident. He was employed by Defendants for
10 approximately eight (8) days in September 2020 as a “Deskside Support Representative Onsite
11 Support” employee.

12 7. Plaintiff alleges that he and all other employees he seeks to represent worked under
13 Defendants’ policies and as a result suffered the same violations alleged herein.

14 8. Plaintiff was employed by the alleged violators and had one or more of the alleged
15 violations committed against him. As a result, he is an “aggrieved employee” and is properly
16 suited to represent the interests of all other aggrieved employees of Defendants.

17 9. ARTECH INFORMATION SYSTEMS L.L.C. is a New Jersey limited liability
18 company.

19 10. The true names and capacities of DOES 1 through 10 are unknown to Plaintiff, who
20 sues them by fictitious names. Code of Civil Procedure § 474. Plaintiff is informed, believes, and
21 alleges each DOE Defendant is legally responsible in some manner for the unlawful acts alleged.
22 Plaintiff will amend to add the names and capacities of DOE Defendants when they become
23 known.

24 11. Plaintiff is informed and believes each Defendant acted in all respects pertinent to
25 this action as the agent of the other Defendants, carried out a joint scheme, plan or policy, and the
26 acts of each Defendant are legally attributable to the other Defendants.

27 **IV. GENERAL ALLEGATIONS**

28 12. Plaintiff incorporates and re-alleges the preceding paragraphs of this Complaint.

1 13. During the Class and PAGA Periods, Plaintiff and all other similarly-situated and
2 aggrieved employees were employed by Defendants in the State of California.

3 14. During the Class and PAGA Periods, Defendants have conducted business in
4 California and within Orange County, California.

5 15. During the Class and PAGA Periods, Plaintiff and all other similarly-situated and
6 aggrieved employees were paid as hourly, non-exempt employees.

7 16. During the Class and PAGA Periods, Plaintiff entered into an Employment
8 Agreement with Defendants whereby Plaintiff would be compensated at a rate of \$27.00 per hour
9 for regular hours worked and \$40.50 for overtime hours worked. Pursuant to the terms of the
10 Employment Agreement, Plaintiff would be employed by Defendants on a probationary trial basis
11 for the first 35 business days of the assignment. During this time, Defendants would pay Plaintiff
12 \$10 per hour plus a draw against end of month pay, equaling the hourly salary agreed to in the
13 Employment Agreement. In the event Plaintiff resigned or was terminated for poor performance,
14 Plaintiff would be paid only the hourly salary of \$10 per hour without any additional monies
15 drawn from completion of the trial period.

16 17. In 2020, employers in California with 26 or more employees were required to pay a
17 minimum wage of at least \$13.00 per hour. In 2021, employers in California with 26 or more
18 employees are and were required to pay a minimum wage of at least \$14.00 per hour. Plaintiff
19 believes and alleges, after investigation, that Defendants employed and continue to employ more
20 than 26 employees in California.

21 18. Plaintiff worked 64 hours before separating from Defendants and was only paid
22 \$10.00 per hour for those 64 hours.

23 19. Plaintiff believes and alleges he received only positive feedback on his work
24 performance during his 64 hours of employment by Defendants.

25 20. During the Class and PAGA Periods, Defendants failed to pay Plaintiff and all other
26 similarly-situated and aggrieved employees all minimum wages owed for all applicable hours
27 worked during the probationary trial basis.

28 21. During the Class and PAGA Periods, Defendants had a consistent policy of failing

1 to pay Plaintiff and members of the Plaintiff Class all wages that were due upon termination, in
2 violation of California state wage and hour laws.

3 22. During the Class and PAGA Periods, Defendants knowingly and willfully failed to
4 provide accurate itemized wage statements to Plaintiff and all other similarly-situated and
5 aggrieved employees. Specifically, Defendants failed to pay all minimum wages, and failed to
6 accurately set forth the total gross wages earned, net wages earned, total hours worked, and all
7 applicable hourly rates and the total number of hours worked at each rate. Additionally, the wage
8 statements provided to Plaintiff and member of the Plaintiff Class did not accurately provide the
9 full name of the legal entity that is the Employer.

10 23. Plaintiff, on behalf of himself and all other similarly-situated employees in the State
11 of California, brings this class action pursuant to Labor Code sections 201, 202, 203, 218.5, 218.6,
12 226, 226.7, 558.1, 1194, 1194.2, 1194.5, 1197, and 1198 seeking unpaid minimum wages,
13 penalties, equitable relief, and reasonable attorneys' fees and costs.

14 24. Plaintiff, on behalf of himself and all other similarly-situated employees, brings this
15 action pursuant to Business and Professions Code sections 17200-17208, seeking injunctive relief,
16 restitution, and disgorgement of all benefits obtained by Defendants by failing to pay all wages
17 owed.

18 V. CLASS ACTION ALLEGATIONS

19 25. Plaintiff brings this action on behalf of himself and all others similarly-situated as a
20 class action pursuant to Code of Civil Procedure section 382. The members of the Plaintiff Class
21 are defined as follows:

22 Plaintiff Class

23 All individuals employed by Defendants in the State of California as hourly
24 employees who were terminated and did not complete the 35-business day
25 probationary period, at any time from four years before the filing of this
Complaint.

26 26. Plaintiff seeks to certify a Subclass of employees defined as:

27 Minimum Wage Subclass

28 All members of the Plaintiff Class who were paid \$10.00 per hour for all
hours worked or under Defendants' control.

1 27. Plaintiff seeks to certify a Subclass of employees defined as:

2 **Waiting Time Subclass**

3 All members of the Plaintiff Class whose employment with Defendant
4 ended prior to the completion of the 35-business day probationary period.

5 28. Plaintiff seeks to certify a Subclass of employees defined as:

6 **Wage Statement Subclass**

7 All members of the Plaintiff Class who received one or more itemized wage
8 statements.

9 29. Plaintiff seeks to certify a subclass of employees defined as follows:

10 **UCL Subclass**

11 All members of the Plaintiff Class who were subject to Defendants' pay and
12 wage statement practices.

13 30. Plaintiff reserves the right to modify the Class description or further divide it into
14 subclasses or limit it to particular issues. California Rules of Court, Rule 3.765(b).

15 31. This action has been brought and may be maintained as a class action pursuant to
16 Code of Civil Procedure section 382 because there is a well-defined common interest of many
17 persons and it is impractical to bring them all before the court.

18 **A. Ascertainable Class**

19 32. The proposed class and subclasses are ascertainable because they can be identified
20 and located using Defendants' payroll and personnel records.

21 **B. Numerosity**

22 33. While the precise number of Class Members has not yet been determined, Plaintiff
23 is informed and believes there are over 100 putative Class members in California affected by
24 Defendants' policies. Joinder of all members of the proposed Class is not practicable.

25 **C. Commonality**

26 34. Questions of law and fact common to the Class predominate over any questions
27 affecting only individual Class Members. Common questions are set forth in each of the causes of
28 action throughout this Complaint.

1 **D. Typicality**

2 35. The claims of the named Plaintiff are typical of the claims of the proposed Plaintiff
3 Class. Plaintiff and all members of the Class and subclasses sustained injuries and damages caused
4 by the Defendants' common course of conduct in violation of laws, regulations that have the force
5 and effect of law, and statutes as alleged.

6 **E. Adequacy of Representation**

7 36. Plaintiff will fairly and adequately represent and protect the interests of the
8 members of the Class. Proposed Class Counsel, Cohelan Khoury & Singer, the Carter Law Firm,
9 and The Phelps Law Group, who represent Plaintiff, are competent and experienced in litigating
10 employment class actions. Plaintiff is aware and understands his obligations to faithfully assist in
11 the preparation of the case and to make decisions in the best interests of the putative class.

12 **F. Superiority of Class Action**

13 37. A class action is superior to other available means for the fair and efficient
14 adjudication of this controversy. Each Class Member has been damaged and is entitled to recovery
15 by Defendants' illegal policies and practices, and a class action allows them to litigate their claims
16 in the most efficient and economical manner for the parties and judicial system. There are no likely
17 difficulties managing this action that preclude its maintenance as a class action.

18 38. The predominating common questions of law and fact include:

- 19 a. Whether Defendants paid Plaintiff and members of the Plaintiff Class all minimum
20 wages owed;
- 21 b. Whether Defendants provided Plaintiff and members of the Plaintiff Class with
22 accurate itemized wage statements pursuant to Labor Code section 226;
- 23 c. Whether Defendants timely paid Plaintiff and members of the Plaintiff Class all
24 wages due upon separation of employment pursuant to Labor Code sections 201,
25 202, and 203;
- 26 d. Whether Defendants violated sections 17200, *et seq.* of the Business and
27 Professions Code; and
- 28 e. Whether Plaintiff and members of the Plaintiff Class are entitled to equitable relief

1 pursuant to Business and Professions Code, sections 17200, *et seq.*

2 **VI. CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**
4 **FAILURE TO PAY MINIMUM WAGES**

5 39. Plaintiff incorporates and re-alleges the preceding paragraphs of this Complaint.

6 40. During the Class and PAGA Periods, Defendants had a policy and practice of
7 failing to pay Plaintiff and members of the Minimum Wage Subclass all legally owed minimum
8 wages.

9 41. As a direct result, Plaintiff and members of the Minimum Wage Subclass have
10 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages,
11 including lost interest on such monies and expenses and attorney's fees in seeking to compel
12 Defendants to fully perform their obligation under state law, all to their respective damage in amounts
13 according to proof at trial and within the jurisdictional limitations of this Court.

14 42. Plaintiff, on behalf of himself and members of the Minimum Wage Subclass, seeks
15 minimum wages, in amounts to be determined at trial, plus interest thereon, liquidated damages in
16 an amount equal to the wages unlawfully unpaid, attorneys' fees, and costs to the fullest extent
17 permitted by law.

18 **SECOND CAUSE OF ACTION**
19 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

20 43. Plaintiff incorporates and re-alleges the preceding paragraphs of this Complaint.

21 44. Labor Code section 226(a) provides: "Every employer shall, semimonthly or at the
22 time of each payment of wages, furnish each of his or her employees... an accurate itemized
23 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
24 (5) net wages earned... ..and (9) all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the employee..."

26 45. Due to Defendants' failure to pay minimum wages for all hours worked as required
27 by the Labor Code, the wages and hours worked listed on each wage statement provided to
28 Plaintiff and members of the Wage Statement Subclass were misstated and violated Labor Code

1 Sections 226(a)(1), (2), (5), and (9). Defendants' actions were intentional and willful.

2 46. As a consequence of Defendants' knowing and willful failure to comply with Labor
3 Code section 226(a), Plaintiff and members of the Wage Statement Subclass are entitled to actual
4 damages or penalties not to exceed \$4,000 for each employee pursuant to Labor Code section
5 226(b), together with interest and attorneys' fees and costs.

6 47. Labor Code section 226(h) states: "An employee may also bring an action for
7 injunctive relief to ensure compliance with this section, and is entitled to an award of costs and
8 reasonable attorney's fees."

9 48. As a direct result of Defendants' violations alleged herein, Plaintiff and members of
10 the Wage Statement Subclass have suffered, and continue to suffer, injury including substantial
11 losses related to the use and enjoyment of such wages, lost interest on such monies and expenses
12 and attorney's fees in seeking to compel Defendants to fully perform their obligations under state
13 law, all to their respective damage in amounts according to proof at trial and within the
14 jurisdictional limitations of this Court.

15 49. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid
16 wages, penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible
17 including as permitted by Labor Code sections 226(b) and 226(h), and Code of Civil Procedure
18 section 1021.5.

19 **THIRD CAUSE OF ACTION**
20 **FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT**

21 50. Plaintiff incorporates and re-alleges the preceding paragraphs of this Complaint.

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

24 52. Labor Code section 202(a) states: "If an employee not having a written contract for
25 a definite period quits his or her employment, his or her wages shall become due and payable not
26 later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her
27 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.
28 Notwithstanding any other provision of law, an employee who quits without providing a 72-hour

1 notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing
2 address. The date of the mailing shall constitute the date of payment for purposes of the
3 requirement to provide payment within 72 hours of the notice of quitting.”

4 53. Through Defendants’ conduct during the applicable statutory period including, but
5 not limited to, the conduct alleged herein, Defendants willfully failed to provide Plaintiff and
6 members of the Waiting Time Subclass with all wages due and owing by the time specified by
7 Labor Code sections 201(a) and 202(a), as applicable.

8 54. Labor Code section 203(a) states, in relevant part: “If an employer willfully fails to
9 pay, without abatement or reduction, in accordance with sections 201, 201.3, 201.5, 202, and
10 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall
11 continue as a penalty from the due date thereof at the same rate until paid or until an action
12 therefore is commenced; but the wages shall not continue for more than 30 days.”

13 55. As a direct result of Defendants’ violations alleged herein, Plaintiff and members of
14 the Waiting Time Subclass have suffered, and continue to suffer, substantial losses related to the
15 use and enjoyment of such wages, including lost interest on such monies and expenses and
16 attorneys’ fees in seeking to compel Defendants to fully perform their obligation under state law,
17 all to their respective damage in amounts according to proof at trial and within the jurisdictional
18 limitations of this Court.

19 56. Plaintiff, on behalf of himself and members of the Waiting Time Subclass, seeks to
20 recover in a civil action all remedies to the fullest extent permissible including those permitted
21 pursuant to Labor Code section 203 and Code of Civil Procedure 1021.5.

22 **FOURTH CAUSE OF ACTION**
23 **VIOLATION OF THE UNFAIR COMPETITION LAW**

24 57. Plaintiff incorporates and re-alleges the preceding paragraphs of this Complaint.

25 58. Defendants’ failure to pay minimum wages and failure to timely pay all wages due
26 during and upon separation of employment to Plaintiff, and each Plaintiff Class Member and UCL
27 Subclass Member, constitutes unlawful and unfair business practices within the meaning of
28 Business and Professions Code sections 17200, *et seq.*, including but not limited to violations of

1 the applicable State of California Industrial Welfare Commission Wage Orders, regulations, and
2 statutes. These practices are also unfair and unlawful because the Defendants did not make tax
3 contributions on the accrued compensation in the form of FICA, Social Security, Medicare, and
4 Unemployment Insurance.

5 59. This cause of action is brought under Business and Professions Code sections
6 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action and
7 pursuant to Business and Professions Code section 17208, Plaintiff and all Plaintiff Class Members
8 and UCL Subclass Members seek restitution of wages owed and, where applicable, penalties under
9 Labor Code section 203, where such wages were due to each of the Class Members during the
10 Class Period, according to proof.

11 60. This cause of action is brought as a cumulative remedy as provided in Business and
12 Professions Code section 17205, and is intended as an alternative remedy for restitution for
13 Plaintiff and the “Minimum Wage Subclass” for any portion of time commencing within three (3)
14 years before filing this complaint, and as the primary remedy for Plaintiff, and aforementioned
15 Subclasses for any portion of time during the *fourth year* before filing this Complaint, as this
16 period of time exceeds the general three-year statute of limitations on statutory wage claims, and is
17 a basis for restitution for all wage claims on an equitable basis and subject to court adjudication.

18 61. As a result of the Defendants’ unlawful and unfair business practice of failing to
19 pay minimum wages and failing to promptly pay all wages owed in violation of Labor Code
20 sections 201 and 202, each Plaintiff Class Member and UCL Subclass Member has suffered
21 damages and is entitled to restitution in an amount according to proof.

22 62. Plaintiff, on behalf of himself and other proposed members of the Plaintiff Class
23 and UCL Subclass, will seek restitution of wages in an amount according to proof within the
24 UCL’s applicable limitations period.

25 **FIFTH CAUSE OF ACTION**
26 **PAGA CIVIL PENALTIES FOR FAILURE TO PAY MINIMUM WAGES**

27 63. Plaintiff incorporates and re-alleges the preceding paragraphs of this Complaint.

28 64. Labor Code section 2699(a) provides: “[A]ny provision of this code that provides

1 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
2 or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation
3 of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved
4 employee on behalf of himself or herself and other employees pursuant to the procedures specified
5 in Section 2699.3.”

6 65. Labor Code section 2699(f)(2) provides: “For all provisions of this code except
7 those for which a civil penalty is specifically provided, there is established a civil penalty for a
8 violation of these provisions [] (2) If, at the time of the alleged violation, the person employs one
9 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
10 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
11 per pay period for each subsequent violation.”

12 66. Section 2699.3(a) applies to any alleged violation of Labor Code sections 1194 and
13 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

14 67. During the PAGA Period, Defendants failed to pay all minimum wages, as alleged
15 herein because Defendants did not pay Plaintiff and other aggrieved employees at the legally
16 compliant California minimum wage rate.

17 68. Plaintiff will seek penalties of \$100 for the initial violation and \$200 for each
18 subsequent violation.

19 69. Plaintiff, as a representative of the general public, will and does seek to recover any
20 and all penalties for each and every violation, in an amount according to proof, as to those
21 penalties that are otherwise available pursuant to the PAGA. Funds recovered will be distributed in
22 accordance with the PAGA, with 75% of the penalties recovered being sent to the State of
23 California and the LWDA.

24 **SIXTH CAUSE OF ACTION**
25 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED**
26 **WAGE STATEMENTS**

27 70. Plaintiff incorporates and re-alleges the preceding paragraphs of this Complaint.

28 71. Labor Code section 2699.5 provides that Section 2699.3(a) applies to an alleged
violation of Labor Code section 226.

72. Labor Code section 226.3 provides for civil penalties for violations of Section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

73. During the PAGA Period, Defendants' violated Labor Code section 226 by issuing wage statements which did not reflect the total gross wages earned, net wages earned, total hours worked, and all applicable hourly rates and the total number of hours worked at each rate. Additionally, the wage statements provided to Plaintiff and other aggrieved employees did not accurately provide the full name of the legal entity that is the Employer. Defendants' actions were intentional and willful.

74. Plaintiff will seek penalties of \$250 for the initial violation and \$1,000 for each subsequent violation.

75. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties that are otherwise available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of the penalties recovered being sent to the State of California and the LWDA.

SEVENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT

76. Plaintiff incorporates and re-alleges the preceding paragraphs of this Complaint.

77. Labor Code section 210(a) provides: "(a) In addition to, *and entirely independent and apart from*, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." [Emphasis added.]

78. Labor Code section 256 provides: "The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days' pay as waiting time under the terms of Section 203." Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code for

1 which there is no corresponding civil penalty. The civil penalty is \$100 for the initial violation and
2 \$200 for each subsequent violation for each underpaid employee.

3 79. During the PAGA Period, as alleged herein, Defendants failed to provide Plaintiff
4 and other aggrieved employees with all minimum wages due. Defendants also failed to pay these
5 wages that were due upon separation of employment. Defendants did not provide waiting time
6 penalties to Plaintiff nor to other aggrieved employees.

7 80. Plaintiff will seek penalties under Labor Code sections 210, 256, and/or 2699(f)(2).

8 81. Plaintiff, as a representative of the general public, will and does seek to recover any
9 and all penalties for each and every violation, in an amount according to proof, as to those
10 penalties that are otherwise available pursuant to the PAGA. Funds recovered will be distributed in
11 accordance with the PAGA, with 75% of the penalties recovered being sent to the State of
12 California and the LWDA.

13 **VII. PRAYER FOR RELIEF**

14 Plaintiff prays for judgment as follows:

15 1. That the Court determine this action may be maintained as a class action and
16 Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;

17 2. For injunctive relief as provided by the Labor Code to the extent permitted by law
18 including, but not limited to, pursuant to Section 226(h), and Business and Professions Code
19 sections 17200, *et seq.*;

20 3. For restitution as provided by Business and Professions Code sections 17200, *et*
21 *seq.*;

22 4. For an order requiring Defendants to restore and disgorge all funds to each affected
23 person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or
24 fraudulent and, therefore, constituting unfair competition under Business and Professions Code
25 sections 17200, *et seq.*;

26 5. For an award of unpaid minimum wages to the extent permissible by law to each
27 affected person;

28 6. For penalties to the extent permitted pursuant to the Labor Code, and Orders of the

1 Industrial Welfare Commission including, but not limited to penalties under Labor Code section
2 226(e);

3 7. For an award of waiting time penalties pursuant to Labor Code section 203(a);

4 8. For an award of liquidated damages to the extent permissible by Labor Code section
5 1194.2;

6 9. For pre and post-judgment interest to the extent permitted by law including, but not
7 limited to, Labor Code section 1194;

8 10. For maintenance of this claim as a Representative Action under the PAGA, and
9 providing Plaintiff and his counsel with all enforcement capability as if this action had been
10 instituted by the Department of Labor Standards Enforcement (“DLSE”);

11 11. For recovery of civil penalties as permitted by Labor Code section 2699.3, in an
12 amount according to proof;

13 12. For recovery of civil penalties as permitted by Labor Code section 226.3, for failing
14 to provide accurate itemized wage statements, in an amount to be assessed and according to proof;

15 13. For recovery of civil penalties as permitted by Labor Code sections 210 and/or 256
16 for failure to timely pay wages due during and upon termination of employment;

17 14. For recovery of civil penalties as permitted by Labor Code section 2699(f)(2) where
18 a statutory civil penalty is not provided, including but not limited to failing to comply with Labor
19 Code sections 201-203;

20 15. For determination of the appropriate remedy to compensate Plaintiff, the Plaintiff
21 Class, and the Subclass Members, as required to promote fairness and justice, including but not
22 limited to establishing procedures for compensation, and fluid recovery if appropriate;

23 16. Attorneys’ fees and costs of suit, including expert fees and fees pursuant to
24 California Labor Code sections 218.5, 226, 226(h), and 1194, the PAGA, Code of Civil Procedure
25 section 1021.5, and all other applicable state laws;

26 17. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as to
27 any restitution recovery; and

28 ///

18. Any other relief as this Court deems proper.

COHELAN KHOURY & SINGER
THE CARTER LAW FIRM
THE PHELPS LAW GROUP

Dated: March 8, 2021

By: 
Michael D. Singer, Esq.
Rosemary C. Khoury, Esq.
Attorneys for Plaintiff Nicolas Villani

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

COHELAN KHOURY & SINGER
THE CARTER LAW FIRM
THE PHELPS LAW GROUP

Dated: March 8, 2021

By: 
Michael D. Singer, Esq.
Rosemary C. Khoury, Esq.
Attorneys for Plaintiff Nicolas Villani

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC•

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

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December 16, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED MAIL (RETURN RECEIPT)

Artech Information Systems L.L.C.
360 Mt. Kemble Avenue, Suite 2000
Morristown, NJ 07960

Artech Information Systems L.L.C.
c/o Ranjini Poddar
Agent for Service
2201 Walnut Avenue, Suite 240
Fremont, CA 94538

**Re: NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR
CODE SECTION 2699.3**

This letter shall serve as Nicolas Villani's (hereafter "Claimant") *Notice* pursuant to the California Private Attorneys General Act ("PAGA"), California Labor Code sections 2698, *et seq.* regarding his wage and hour claims against Artech Information Systems L.L.C. (hereafter "Artech"). Claimant submits this notice on behalf of himself and all current and former employees in California (including but not limited to "Desktop Support Representative Onsite Support" employees) who during the one year preceding the date of this Notice suffered one or more of the violations described herein (collectively, "aggrieved employees"). At all relevant times at least one year prior to the date of this Notice, Artech violated the Labor Code with respect to Claimant and aggrieved employees, as set forth below.

FACTUAL ALLEGATIONS

Claimant worked for Artech as a "Deskside Support Representative Onsite Support" employee for approximately 8 days in September 2020.

Artech offered, by email, to employ Claimant and pay him at a rate of \$27.00 per hour as a W-2 employee. Artech confirmed this pay rate to Claimant over the telephone.

Artech also sent Claimant an Employment Agreement, which he signed. The Employment Agreement provided: "Employee shall be paid at a rate of \$27.00 per hour for each hour worked by the Employee...This position is classified as Non-Exempt. Any overtime...will be paid at an hourly rate of \$40.50...". However, the Agreement also provided, in paragraph 10: "Employee agrees and acknowledges that employee will be employed on a probationary trial basis for the first 35 business days of the assignment. During this time Artech will pay employee for earnings of \$10 per hour plus a draw against end of month pay, equaling the hourly salary agreed to in Exhibit A of this document. In the event employee resigns or is terminated for poor performance, employee

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will be paid only for hourly salary of \$10 without any additional monies drawn from completion of trial period.”

Claimant realized when he received his first and final wage statement that he was paid only \$10.00 per hour for the 64 hours that he had worked before separating from Artech, and that he was classified on the wage statement as “exempt.” The employer was listed on Claimant’s wage statement as “Artech LLC.” Claimant alleges he only received positive feedback on his work performance.

UNPAID WAGES

Artech failed to pay Claimant and other aggrieved employees all minimum wages for all applicable hours of work, including the time spent working during a probationary trial basis. In 2020, employers with 26 or more employees are and were required to pay a minimum wage of at least \$13.00 per hour. Claimant believes, after investigation, that Artech employs more than 26 employees. Artech thus paid less than the minimum wage to Claimant and other aggrieved employees by paying them \$10.00 per hour.

WAGE STATEMENTS

Artech failed to provide accurate wage statements to Claimant and other aggrieved employees. The paystubs provided to Claimant and other aggrieved employees did not contain all accurate information as required by Labor Code section 226(a). Because, as described above, Artech failed to pay all minimum wages, it also failed to accurately set forth the total gross wages earned, net wages earned, total hours worked, and all applicable hourly rates and the total number of hours worked at each rate. Additionally, the wage statements provided to Claimant and other aggrieved employees did not accurately provide the full name of the legal entity that is the employer because the wage statements listed Artech LLC, but not Artech Information Systems L.L.C., as the employer.

FAILURE TO TIMELY PAY WAGES

During his employment, Claimant was not paid all wages owed within the time set forth in Labor Code section 204 due to the failure to pay all minimum wages as described herein.

WAITING TIME PENALTIES

Additionally, Artech failed to pay Claimant and aggrieved employees all wages owed to them upon separation within the time required because it did not pay all wages earned as set forth herein. Artech also did not pay a day’s wages for every day all final pay was not paid, up to 30 days’ wages. Claimant alleges, based on personal experience and observations, that the violations of the Labor Code described herein were suffered by other current and former employees of Artech.

FAILURE TO PAY MINIMUM WAGES

(Labor Code §§, 510, 1194, 1197, 1197.1, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order)

Artech failed to pay all minimum wages required by law.

Labor Code section 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1198 states: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked.

As set forth in detail above, Artech violated Labor Code sections 510, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved employees all minimum wages for all hours worked.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Labor Code §§ 246(i), 226(a), 226.3, 1198, and 2699, and the “Records” Section of the Applicable Wage Order)

Labor Code section 226(a) states in pertinent part: “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all

deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is 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... and if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.”

Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney’s fees.

As detailed herein, Artech failed to provide Claimant with an accurate, itemized wage statement complying with the requirements of the Labor Code and applicable IWC Wage Order. Claimant will pursue all remedies, including recovery of wages, interest, attorneys’ fees and costs, penalties and those provided by the PAGA, to the extent allowed by law, on behalf of himself and other aggrieved employees of Artech.

**FAILURE TO TIMELY PAY WAGES DUE DURING
AND UPON TERMINATION OF EMPLOYMENT**

(Labor Code §§ 201, 201.3, 202, 203, 204, 256, 1198, and 2699, and the “Minimum Wages”
Section of the Applicable Wage Order)

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Section 204(d) states, “The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 201 states: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5,

any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 210(a) provides: “(a) In addition to, *and entirely independent and apart from, any other penalty provided in this article*, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

As detailed herein, Artech failed to timely pay Claimant and aggrieved employees all wages due and owing during and upon termination of employment. Artech willfully failed to pay all wages and penalties when required by Sections 201, 201.3, 202, and 204 of the Labor Code. Therefore, Artech is subject to penalties with respect to all affected employees, including Claimant.

**CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS**
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100

for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, Artech violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 510, 1197, and 1198, and caused aggrieved employees to be paid less than the minimum set by the IWC Wage Order. As a result, Artech is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

As also set forth above, Artech was the employer, or other person acting on behalf the employer, and violated, or caused to be violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 203, 226, 510, 1194, 1197, and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, Artech is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, and 1198 and § 7 of the Applicable IWC Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

Artech violated Sections 1174 and 1198, and section 7 of the applicable IWC wage order by failing to maintain time accurate time records.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, damages, liquidated damages and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, Artech is liable for these items in addition to the unpaid wages. Mr. Villani has already incurred actual damages, costs, and attorney's fees and will continue to incur costs as a result of Artech's unlawful actions.

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CONCLUSION

Artech violated labor code sections as set forth herein. Claimant will pursue all remedies on behalf of himself and other aggrieved employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint for damages. Should you have any questions, please feel free to contact me at your convenience.

Sincerely,
COHELAN KHOURY & SINGER



Rosemary C. Khoury

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