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individually and on behalf of all other AGGRIEVED EMPLOYEES

**SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF LOS ANGELES**

MARIAM DAVTYAN, an individual, on behalf ) **Case No.**  
 of herself and all other AGGRIEVED )  
 EMPLOYEES )

Plaintiff,

vs.

) **COMPLAINT FOR ENFORCEMENT**  
 ) **UNDER THE PRIVATE ATTORNEYS**  
 ) **GENERAL ACT, CALIFORNIA LABOR**  
 ) **CODE § 2698, ET SEQ.**

) Violation of California Labor Code § 2698, et  
 ) seq. (California Labor Code Private Attorneys  
 ) General Act of 2004)

IN2VISION PROGRAMS, LLC, a California )  
 Limited Liability Company; LUANA ACUNA, )  
 an individual; and DOES 1 through 100, )  
 inclusive, )

Defendants.

Plaintiff MARIAM DAVTYAN (hereinafter referred to as “REPRESENTATIVE  
 PLAINTIFF”) alleges as follows:

**PARTIES**

1. REPRESENTATIVE PLAINTIFF is an individual who resides in California and  
 was employed by IN2VISION PROGRAMS, LLC, from on or about September 6, 2017 until on or

1 about February 25, 2020.

2 2. REPRESENTATIVE PLAINTIFF is informed and believes, and based on such  
3 information and belief, alleges that at all times mentioned herein, IN2VISION PROGRAMS, LLC  
4 is a California Limited Liability Company, licensed to do business and actually doing business in  
5 the State of California.

6 3. The term “DEFENDANTS” used throughout this Complaint includes all named  
7 DEFENDANTS whether corporate, individual, or otherwise, and all unnamed DEFENDANTS  
8 whether corporate, individual, or otherwise, that are now unknown but are referred to throughout  
9 this Complaint as DOES 1 through 100, inclusive.

10 4. REPRESENTATIVE PLAINTIFF is informed and believes, and based on such  
11 information and belief, alleges that DEFENDANTS are a an instructional agency that specializes in  
12 clients with developmental disabilities, and have numerous locations throughout California. Thus,  
13 DEFENDANTS are subject to the applicable California laws as alleged throughout this Complaint.

14 5. REPRESENTATIVE PLAINTIFF is unaware of the true names and capacities,  
15 whether corporate, individual, or otherwise, of DEFENDANTS named as DOES 1 through 100,  
16 inclusive. Pursuant to California Code of Civil Procedure section 474, REPRESENTATIVE  
17 PLAINTIFF will seek leave of court to amend this complaint to state said DEFENDANTS’ true  
18 names and capacities when the same have been ascertained. REPRESENTATIVE PLAINTIFF is  
19 informed and believes, and based thereon alleges, that said fictitiously-named DEFENDANTS are  
20 responsible in some manner for the injuries and damages to REPRESENTATIVE PLAINTIFF and  
21 the other AGGRIEVED EMPLOYEES as further alleged herein.

22 6. The AGGRIEVED EMPLOYEES worked for all of the DEFENDANTS or for  
23 either of the DEFENDANTS as non-exempt, hourly-paid employees. Nothing in this Complaint  
24 should be interpreted as limiting the AGGRIEVED EMPLOYEES to non-exempt, hourly-paid  
25 employees who worked for all DEFENDANTS only.

26 7. The definition of “employer” for purposes of the California Labor Code includes  
27 irregular working arrangements, and was specifically drafted in order to prevent evasion and  
28 subterfuge of California’s labor laws. To that end, REPRESENTATIVE PLAINTIFF is informed

1 and believes, and based thereon alleges, that DEFENDANTS, including any as of now unknown  
2 entities, must be classified as joint-employers for purposes of liability for civil penalties under the  
3 Private Attorneys General Act (“PAGA”). As such, DEFENDANTS are each liable for civil  
4 penalties for violation of the California Labor Code as to REPRESENTATIVE PLAINTIFF and  
5 the other AGGRIEVED EMPLOYEES.

6 8. REPRESENTATIVE PLAINTIFF is informed and believes, and based thereon  
7 alleges, that DEFENDANT LUANA ACUNA (hereinafter, “DEFENDANT ACUNA”) is an  
8 individual who resides in the State of California and the County of Los Angeles. LUANA ACUNA  
9 was and is an agent of DEFENDANTS, and in that capacity was and is responsible for overseeing  
10 and implementing DEFENDANTS timekeeping policies and procedures that REPRESENTATIVE  
11 PLAINTIFF and the other AGGRIEVED EMPLOYEES were made to follow.

12 9. This is only a Private Attorney General Action Complaint, pursuant to California  
13 Labor Code section 2699 et seq., on behalf of REPRESENTATIVE PLAINTIFF and all other  
14 persons similarly situated who worked for DEFENDANTS in their California locations as non-  
15 exempt, hourly employees (herein collectively identified as “AGGRIEVED EMPLOYEES”) for:

16 (i) Failure to provide employment records in violation of Labor Code sections 226,  
17 432, and 1198.5;

18 (ii) failure to pay overtime and double time in violation of Labor Code sections 510 and  
19 the applicable Wage Orders;

20 (iii) failure to provide rest and meal periods in violation of Labor Code sections 226.7,  
21 512(a), and the applicable Wage Orders;

22 (iv) failure to pay minimum wage in violation of Labor Code sections 1182.2, 1194,  
23 1197, 1197.1, and the applicable Wage Orders;

24 (v) failure to keep accurate payroll records and provide itemized wage statements in  
25 violation of Labor Code sections 226(a), 1174(d), 1198, and the applicable Wage Orders;

26 (vi) failure to pay reporting time wages in violation of California Code of Regulations,  
27 Title 8, section 11050(5)(A);

28 (vii) failure to pay split shift wages in violation of California Code of Regulations

1 11050(4)(C);

2 (viii) failure to pay all wages earned on time in violation of Labor Code section 204;

3 (ix) failure to pay all wages earned upon discharge or resignation in violation of Labor  
4 Code sections 201, 202, and 203;

5 (x) failure to provide basic information at the time of hiring and when employment  
6 changes occur in violation of Labor Code section 2810.5(a)(1)(A)-(C) (Wage Theft Prevention  
7 Act).

8 (xi) failure to reimburse necessary, business-related expenses in violation of Labor Code  
9 sections 2800 and 2802;

10 (xii) failure to provide notice of paid sick time and accrual in violation of Labor Code  
11 section 246;

12 (xiii) employers, and individuals acting on behalf of employers, violating or causing to be  
13 violated a section of the Labor Code or any Wage Order in violation of Labor Code section 558(a).

#### 14 **VENUE AND JURISDICTION**

15 10. Venue is proper under California Code of Civil Procedure section 395 and under  
16 California Government Code section 12965(b), in that REPRESENTATIVE PLAINTIFFS'  
17 injuries were incurred within the County of Los Angeles, the actions giving rise to  
18 REPRESENTATIVE PLAINTIFFS' Complaint arose within the County of Los Angeles, and  
19 DEFENDANTS are located in the County of Los Angeles.

20 11. This Court has jurisdiction over REPRESENTATIVE PLAINTIFFS' claims for  
21 civil penalties under the PAGA, California Labor Code sections 2698 *et seq.*

#### 22 **SCOPE**

23 12. The "AGGRIEVED EMPLOYEES" are DEFENDANTS current and former hourly-  
24 paid, non-exempt employees, who either were or are employed in the State of California from  
25 January 15, 2020 through the date of judgment in this action.

#### 26 **STATEMENT OF FACTS**

27 13. REPRESENTATIVE PLAINTIFF was hired by DEFENDANTS as a Personal  
28 Attendant-CIT / Instructor on or about September 6, 2017. DEFENDANTS are California Limited

1 Liability Company that operates as an instructional agency specializing in clients with  
2 developmental disabilities. REPRESENTATIVE PLAINTIFF worked for DEFENDANTS up until  
3 on or about February 25, 2020 and received a final pay check on or about March 10, 2020.

4 14. While employed with DEFENDANTS, REPRESENTATIVE PLAINTIFF and other  
5 AGGRIEVED EMPLOYEES that REPRESENTATIVE PLAINTIFF seeks to represent in this  
6 action, working as non-exempt, hourly-paid employees were regularly required to work off-the-  
7 clock, and/or during their rest and/or meal periods.

8 15. REPRESENTATIVE PLAINTIFF filed a PAGA Notice on January 15, 2021 by  
9 serving a PAGA Notice to all named DEFENDANTS and to the LWDA in compliance with Labor  
10 Code section 2699.3. As of Sunday, March 21, 2021, 65 Days after REPRESENTATIVE  
11 PLAINTIFF's PAGA Notice, REPRESENTATIVE PLAINTIFF has not received correspondence  
12 from the LWDA regarding its intent to investigate PLAINTIFF's claims.

13 16. California Labor Code Section 226 provides, "An employer who receives a written  
14 or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or  
15 former employee [records of hours worked and wages paid]...shall comply with the request as  
16 soon as practicable, but no later than 21 calendar days from the date of the request."

17 17. California Labor Code Section 432 provides, "If an employee signs any instrument  
18 relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon  
19 request."

20 18. California Labor Code Section 1198.5 provides that every employee shall be  
21 permitted to inspect and obtain a copy of their personnel records upon request.

22 19. In accordance with the process set out in Labor Code Section 226,  
23 REPRESENTATIVE PLAINTIFF requested, in writing by letter via certified first-class mail to  
24 DEFENDANTS and regular first-class mail to DEFENDANTS, that DEFENDANTS provide  
25 REPRESENTATIVE PLAINTIFF with wage and payroll history, all documents signed by  
26 REPRESENTATIVE PLAINTIFF pursuant to Labor Code Section 432, and a copy of  
27 REPRESENTATIVE PLAINTIFF's personnel records pursuant to Labor Code Section 1198.5.

28 20. The time periods provided to DEFENDANTS by Labor Code Sections 226, 432,

1 1198.5 and any other relevant statutes have elapsed since DEFENDANTS received  
2 REPRESENTATIVE PLAINTIFF's correspondence requesting documents pursuant to Labor Code  
3 Sections 226, 432, and 1198.5, and a copy of REPRESENTATIVE PLAINTIFF's personnel  
4 records pursuant to Labor Code Section 1198.5. However, DEFENDANTS failed to provide  
5 REPRESENTATIVE PLAINTIFF with any of the employment documents to which he is entitled.

6 21. REPRESENTATIVE PLAINTIFF is informed and believes, and based thereon  
7 alleges, that DEFENDANTS failed to provide records in compliance with Labor Code Sections  
8 226, 432, and 1198.5 to other AGGRIEVED EMPLOYEES in response to their requests.

9 22. California Labor Code sections 510 and the applicable Wage Orders require  
10 employers to pay employees working more than eight (8) hours in a day or more than 40 hours in a  
11 week at the rate of at least time-and-one-half (1.5) times their regular rate of pay ("overtime") for  
12 time such worked, and two (2) times their regular rate of pay ("double time") for such hours  
13 worked in excess of 12 hours in a day. "Regular rate" includes all remuneration, including non-  
14 discretionary bonuses and incentives.

15 23. During the relevant time period, REPRESENTATIVE PLAINTIFF and other  
16 AGGRIEVED EMPLOYEES regularly worked in excess of eight (8), and in excess of 12, hours in  
17 a workday and/or 40 hours in a workweek.

18 24. DEFENDANTS routinely required REPRESENTATIVE PLAINTIFF and the other  
19 AGGRIEVED EMPLOYEES to perform work tasks before and/or after their scheduled shifts,  
20 and/or during off-the-clock meal breaks, and/or during rest breaks. As a consequence,  
21 DEFENDANTS willfully failed to pay REPRESENTATIVE PLAINTIFF and the other  
22 AGGRIEVED EMPLOYEES all of the wages to which they were entitled.

23 25. California Labor Code sections 226.7, 512(a), and the applicable Wage Orders  
24 require employers to pay employees one (1) additional hour of pay at the employees' regular rate  
25 for each work day that a legally compliant meal and/or rest break was not provided. Employers  
26 cannot require, cause, or permit an employee to work more than five (5) hours per day without  
27 providing an uninterrupted meal break. If an employee works over ten (10) hours in a workday,  
28 employers are required to either provide a second, uninterrupted 30-minute meal break or pay

1 employees an additional one (1) hour of pay at the employees' regular rate. If the employer fails to  
2 properly record a valid meal period, it is presumed that no meal period was provided. Furthermore,  
3 no employer shall require an employee to work during any rest period. Rest periods requirements  
4 are based on the total hours worked; employees are legally entitled to ten (10) minutes per four (4)  
5 hours, or major fraction thereof, that employee worked.

6 26. DEFENDANTS failed to provide REPRESENTATIVE PLAINTIFF and other  
7 AGGRIEVED EMPLOYEES with the required rest and meal break periods. REPRESENTATIVE  
8 PLAINTIFF and other AGGRIEVED EMPLOYEES were routinely required to work through these  
9 periods instead, because of understaffing, inadequate coverage, unreasonably high workload and  
10 expectations, and/or other actions, inactions, or decisions made by and within the sole control and  
11 discretion of DEFENDANTS.

12 27. REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES worked  
13 shifts in excess of five (5) hours without a meal break, and worked shifts of ten (10) hours or more  
14 without a second meal break, due to understaffing, inadequate coverage, unreasonably high  
15 workload and expectations, and/or other actions, inactions, or decisions made by and within the  
16 sole control and discretion of DEFENDANTS.

17 28. REPRESENTATIVE PLAINTIFF is informed and believes, and based thereon  
18 alleges, that any purported appearance of meal and rest break compliance is because  
19 DEFENDANTS systematically and routinely clocked out for and/or otherwise altered the  
20 timekeeping records of REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES  
21 in an attempt to hide the aforementioned infractions. DEFENDANTS, knowingly and contrary to  
22 law and public policy, employed a tactic of clocking-out employees for rest and/or meal periods  
23 that were never taken and/or were legally non-compliant, and/or otherwise falsified or altered  
24 timekeeping records.

25 29. DEFENDANTS knew, or should have known, that their behavior caused  
26 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES to work through the  
27 above-described meal and/or rest periods. As a company-wide policy, DEFENDANTS still chose  
28 not to pay meal and rest period premiums required by law.

1           30. California Labor Code sections 1182.12, 1194, 1197, and 1197.1 require employers  
2 to pay the minimum wage as set by the IWC. California Labor Code section 1182.12, as amended  
3 by Senate Bill 3, Chapter 4, Section 3, defines the minimum wage as;

4           (1) For any employer who employs 26 or more employees:

5                   (A) From January 1, 2017, to December 31, 2017, \$10.50 per hour.

6                   (B) From January 1, 2018, to December 31, 2018, \$11 per hour.

7                   (C) From January 1, 2019, to December 31, 2019, \$12 per hour.

8                   (D) From January 1, 2020, to December 31, 2020, \$13 per hour.

9                   (E) From January 1, 2021, to December 31, 2021, \$14 per hour.

10                  (F) From January 1, 2022, and until adjusted by subdivision (c) \$15 per hour.

11           (2) For any employer who employs 25 or fewer employees:

12                   (A) From January 1, 2018, to December 31, 2018, \$10.50 per hour.

13                   (B) From January 1, 2019, to December 31, 2019, \$11 per hour.

14                   (C) From January 1, 2020, to December 31, 2020, \$12 per hour.

15                   (D) From January 1, 2021, to December 31, 2021, \$13 per hour.

16                   (E) From January 1, 2022, to December 31, 2022, \$14 per hour.

17                   (F) From January 1, 2023, and until adjusted by subdivision (c) \$15 per hour.

18           31. The minimum wage standard applies to each hour employees worked for which they  
19 were not paid. Therefore, employer's failure to pay for any particular hour worked by an employee  
20 is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in  
21 an average hourly wage above minimum wage.

22           32. As alleged throughout this Complaint, due to the company-wide failures of  
23 DEFENDANTS, REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES were  
24 forced to work off-the-clock before and/or after their scheduled work shifts, and/or during rest  
25 breaks, and/or during meal breaks. DEFENDANTS failed to pay REPRESENTATIVE  
26 PLAINTIFF and other AGGRIEVED EMPLOYEES minimum wage for this time and/or falsified  
27 timekeeping records to hide this fact.

28           33. California Labor Code 226(a) requires employers to create and provide to

1 employees true and accurate employment records. California Labor Code section 226(e) provides  
2 that if an employer fails to furnish an employee with same, the employee is entitled to recover the  
3 greater of all actual damages, or \$50.00 for an initial infraction, and \$100 per employee for each  
4 subsequent violation in any pay period. California Labor Code 226.3 imposes civil penalties on any  
5 employer in violation of section 226(a) at \$250 per employee violation in an initial citation, and  
6 \$1,000 per employee for each subsequent violation.

7 34. California Labor Code 1174(d) requires employers to keep payroll records showing  
8 hours worked, and wages paid to and/or number of piece-rate units earned, for all employees.  
9 California Labor Code section 1174.5 subjects employers to a \$500 penalty for failing to maintain  
10 same.

11 35. California Labor Code section 1198 provides that maximum hours and standard  
12 conditions of labor are fixed by the Labor Commissioner in the applicable Wage Orders. Pursuant  
13 to the applicable Wage Order, employers must keep accurate records of when employees begin and  
14 end each work period and each meal period.

15 36. DEFENDANTS knowingly provided employees with records that do not meet the  
16 statutory requirements of truth and accuracy, because DEFENDANTS failed to truthfully and  
17 accurately document, among other things, employees off-the-clock work. As a result,  
18 DEFENDANTS failed to accurately list the correct amount of gross and/or net wages earned by  
19 REPRESENTATIVE PLAINTIFF and the other AGGRIEVED EMPLOYEES.

20 37. The statements in question are deficient in many other ways, including, but not  
21 limited to: failure to list total hours worked, failing to list applicable hourly rates and the numbers  
22 of hours worked at each rate, failure to list piece-rate units earned and the applicable piece-rate,  
23 failure to list deductions, failure to track sick leave, failure to list the employee and SSN/EID  
24 properly, failure to list the full legal name and address of the employer, failure to list inclusive  
25 dates for which employees are paid, failure to provide employees with the ability to easily access  
26 wage statements and get hard copies at no expense to the employee, and/or failure to state all hours  
27 worked as a result of off-the-clock work.

28 38. DEFENDANTS willfully failed to maintain accurate payroll records for  
8.

1 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES as a result of  
2 DEFENDANTS failure to accurately record employees rest breaks, and/or meal breaks, and/or off-  
3 the-clock work. DEFENDANTS failure makes it impossible for REPRESENTATIVE PLAINTIFF  
4 and other AGGRIEVED EMPLOYEES to accurately determine the extent of their underpayment,  
5 thereby causing further injuries to each of them.

6 39. California Code of Regulations, Title 8, section 11050(5)(A) provides that for each  
7 workday when an employee is required to and does in fact report to work, but is either not put to  
8 work or is furnished less than half of said employee's usual scheduled day's work, that employee  
9 should be paid for no less than half, and in no event less than two (2) hours, of the employees'  
10 regular rate of pay.

11 40. REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES were  
12 frequently told by DEFENDANTS to report to work and were either not put to work or were  
13 furnished less than half of said employee's usual scheduled day's work. DEFENDANTS routinely  
14 failed to pay the required reporting time wages to REPRESENTATIVE PLAINTIFF and other  
15 AGGRIEVED EMPLOYEES for each of these instances.

16 41. California Code of Regulations 11050(4)(C) provides that when an employee works  
17 a "split shift", one (1) hour's pay at the State or local minimum wage (whichever is greater) must  
18 be paid in addition to the minimum wage for that workday. A "split shift" is defined as a work  
19 schedule which is interrupted by non-paid, non-working periods established by the employer, other  
20 than *bona fide* rest or meal periods.

21 42. DEFENDANTS routinely scheduled REPRESENTATIVE PLAINTIFF and other  
22 AGGRIEVED EMPLOYEES for multiple different shifts throughout the same workday, separated  
23 by periods other than *bona fide* rest or meal breaks. DEFENDANTS failed to pay  
24 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES one (1) hour's pay at  
25 the applicable minimum wage, which resulted in REPRESENTATIVE PLAINTIFF and other  
26 AGGRIEVED EMPLOYEES being paid less than the applicable minimum wage for that day. As a  
27 further consequence, DEFENDANTS also failed to separately list "split shift" payments on  
28 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES wage statements.

1           43. California Labor Code section 204 requires that all wages earned, other than those  
2 due upon termination, be paid on time as defined by the statute.

3           44. As a result of the numerous company-wide failures of DEFENDANTS as described  
4 throughout this Complaint, DEFENDANTS failed to pay REPRESENTATIVE PLAINTIFF and  
5 other AGGRIEVED EMPLOYEES all wages due to them, including, but not limited to: minimum  
6 wages, overtime wages, double time wages, split shift pay and/or reporting time pay within the  
7 statutorily required time period.

8           45. California Labor Code sections 201, 202, and 203 provide that employees who are  
9 terminated are due all wages earned immediately. Employees who resign their employment without  
10 giving 72-hours' notice are due all wages earned within 72 hours of their resignation. Employees  
11 who resign their employment giving 72-hours' notice are entitled to all wages earned at the time  
12 their resignation becomes effective.

13           46. DEFENDANTS terminated their employment relationship with  
14 REPRESENTATIVE PLAINTIFF on February 25, 2020. Accordingly, REPRESENTATIVE  
15 PLAINTIFF was due all wages earned immediately.

16           47. When REPRESENTATIVE PLAINTIFF finally received EMPLOYEE's final  
17 paycheck on March 10, 2021, that final paycheck was legally deficient in that it did not account for  
18 all wages earned despite DEFENDANTS knowing that such wages were due to  
19 REPRESENTATIVE PLAINTIFF. Due to the company-wide failures of DEFENDANTS as  
20 described throughout this Complaint, DEFENDANTS similarly failed to pay other AGGRIEVED  
21 EMPLOYEES timely wages upon their discharge or resignation.

22           48. Codified in California Labor Code section 2810.5, California's Wage Theft  
23 Protection Act requires employers to provide employees with basic information at the time of  
24 hiring and when changes occur to their employment. The Wage Theft Protection Act provides that  
25 an employee must be furnished with written notice of, at the time of hiring; rate of pay (including  
26 overtime), whether paid by hour, salary, piece-rate, shift, day, week, commission, or otherwise, and  
27 allowances claimed such as meal or lodging. This notice must include a statement that the  
28 employee can accrue and use sick leave, has the right to request and use paid sick leave, may not

1 be terminated or retaliated against for requesting or using paid sick leave, and has the right to file a  
2 complaint against any employer who does so retaliate.

3 49. DEFENDANTS hired REPRESENTATIVE PLAINTIFF on or about September 6,  
4 2017, and REPRESENTATIVE PLAINTIFF continued to work for DEFENDANTS until on or  
5 about February 25, 2020. During that time, changes, including, but not limited to, raises,  
6 promotions, title changes, relocations, and new and additional assignments were earned by and/or  
7 assigned to REPRESENTATIVE PLAINTIFF. As a result of each of these, changes occurred to  
8 REPRESENTATIVE PLAINTIFF's employment as defined by Labor Code 2810.5(a)(1)(A)-(C)  
9 and the Wage Theft Prevention Act.

10 50. When hired and each time such changes to REPRESENTATIVE PLAINTIFF and  
11 other AGGRIEVED EMPLOYEES employment occurred, DEFENDANTS were required to  
12 furnish documents to REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES  
13 with such basic information and written notice of, among other things, their rate of pay (including  
14 overtime), their right to accrue and request paid sick leave, and their right to file a complaint  
15 against DEFENDANTS should they infringe upon such rights. DEFENDANTS failed to furnish  
16 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES with such written  
17 notices as required.

18 51. California Labor Code Sections 2800 and 2802 require that an employer indemnify  
19 employees for all necessary expenditures or losses incurred by the employee in direct consequence  
20 of the discharge of their duties.

21 52. REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES were  
22 directed and expected to incur personal expenses on behalf of DEFENDANTS while performing  
23 their job duties. Such personal expenses include, but are not limited to: use of personal cell phone,  
24 travel expenses, and parking expenses. REPRESENTATIVE PLAINTIFF and the other  
25 AGGRIEVED EMPLOYEES would not have been able to successfully accomplish their job duties  
26 absent incurring these personal expenses. DEFENDANTS failed to indemnify  
27 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES for all necessary  
28 expenditures or losses accordingly.

1           53. California Labor Code section 246 provides that an employee who works for the  
2 same employer for more than 30 days is entitled to paid sick days. Paid sick leave is to accrue at a  
3 rate not less than one (1) hour per every 30 hours worked, such accrual beginning at the  
4 commencement of employment. Employers must provide employees with written notice setting the  
5 amount of sick leave available (or paid time off in lieu thereof) for use on either itemized wage  
6 statements (as described in Labor Code section 226) or in a separate writing accompanying such  
7 wage statements.

8           54. REPRESENTATIVE PLAINTIFF was hired by DEFENDANTS on or about  
9 September 6, 2017 and worked for DEFENDANTS until on or about February 25, 2020.  
10 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES worked for  
11 DEFENDANT for more than 30 days, triggering the protections of Labor Code section 246 as  
12 described above. Nevertheless, DEFENDANTS failed to furnish upon REPRESENTATIVE  
13 PLAINTIFF and other AGGRIEVED EMPLOYEES, either on itemized wage statements or in a  
14 separate writing accompanying such wage statements, the amount of sick leave available to  
15 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES.

16           55. As such, DEFENDANTS unlawfully retained and continue to retain paid sick leave  
17 that should have been paid to REPRESENTATIVE PLAINTIFF and other AGGRIEVED  
18 EMPLOYEES but for DEFENDANTS failure to properly institute and/or adhere to a legally  
19 compliant paid sick leave program. REPRESENTATIVE EMPLOYEE is informed and believes,  
20 and based thereon alleges, that these practices were experienced and continue to be experienced by  
21 the other AGGRIEVED EMPLOYEES.

22           56. California Labor Code section 558(a) provides that any employer, including  
23 individuals acting on behalf of employers, that violates, or causes to be violated, a section of the  
24 Labor Code or any applicable Wage Orders are subject to the following penalties;

- 25           • \$50 for any initial violation for each underpaid employee for each pay period for  
26           which the employee was underpaid in addition to an amount sufficient to recover  
27           unpaid wages;
- 28           • \$100 for each subsequent violation for each underpaid employee for each pay period

1 for which the employee was underpaid in addition to an amount to recover unpaid  
2 wages;

3 57. Labor Code section 558.1 permits joint and several liability as to both an individual  
4 and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. Labor Code  
5 section 558(c) provides that the penalties in this section are in addition to any other civil penalty.

6 58. DEFENDANTS are employers, and DEFENDANT ACUNA, acting on behalf  
7 thereof, violated REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES' rights  
8 by violating, or causing to be violated, various sections of this code as described throughout this  
9 Complaint.

10 **FIRST CAUSE OF ACTION**

11 **(VIOLATION OF LABOR CODE § 2698, *ET SEQ.*)**

12 **(By REPRESENTATIVE PLAINTIFF Against DEFENDANT(S) and Does 1 through 10,**  
13 **inclusive)**

14 59. REPRESENTATIVE PLAINTIFF incorporates by reference the allegations  
15 contained in each of the preceding paragraphs and each and every part thereof with the same force  
16 and effect as though fully set forth herein.

17 60. PAGA expressly establishes that any provisions of the California Labor Code which  
18 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,  
19 divisions, commissions, boards, agencies or employees for a violation of the California Labor  
20 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of  
21 himself or herself, and other current or former employees.

22 61. Whenever the LWDA, or any of its departments, divisions, commissions, boards,  
23 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized  
24 to exercise the same discretion, subject to the same limitations and conditions, to assess a civil  
25 penalty.

26 62. REPRESENTATIVE PLAINTIFF and the other hourly-paid or non-exempt  
27 employees, are "AGGRIEVED EMPLOYEES" within the meaning of California Labor Code  
28 section 2699(c) as they are all current or former employees of DEFENDANT, and one or more of

1 the alleged violations was committed against them.

2 **Failure to Provide Employment Records**

3 63. DEFENDANTS failure to provide REPRESENTATIVE PLAINTIFF and other  
4 AGGRIEVED EMPLOYEES with employment records constitutes unlawful and/or unfair activity  
5 and is prohibited by California Labor Code 226, 432, and 1198.5.

6 **Failure to Pay Overtime / Double Time**

7 64. DEFENDANTS failure to pay legally required overtime and double time wages to  
8 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES is in violation of the  
9 Wage Orders and constitutes unlawful and/or unfair activity prohibited by California Labor Code  
10 sections 510 and 1198.

11 **Failure to Provide Meal and Rest Periods**

12 65. DEFENDANTS failure to provide legally required meal and rest periods to  
13 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES constitutes unlawful  
14 and/or unfair activity prohibited by California Labor Code sections 226.7, 512(a), and the  
15 applicable Wage Orders.

16 **Failure to Pay Minimum Wages**

17 66. DEFENDANTS failure to pay legally required minimum wages to  
18 REPRESENTATIVE PLAINTIFF and other AGGRIEVED EMPLOYEES constitutes unlawful  
19 and/or unfair activity prohibited by California Labor Code sections 1182.12, 1194, 1197, 1197.1,  
20 and the applicable Wage Orders.

21 **Failure to Keep Accurate and Provide Itemized Wage Statements**

22 67. DEFENDANTS failure to keep accurate and provide itemized wage statements to  
23 Plaintiff and other AGGRIEVED EMPLOYEES constitutes unlawful and/or unfair activity  
24 prohibited by California Labor Code section 226(a), 1174(d), and 1198.

25 **Failure to Pay Reporting Time**

26 68. DEFENDANTS failure to pay REPRESENTATIVE PLAINTIFF and other  
27 AGGRIEVED EMPLOYEES who were required to and did in fact report to work, but who were  
28 then furnished less than half of such employees usual scheduled day's work, with at least half, and

1 in no event less than two (2) hours, of the employees' regular rate of pay constitutes unlawful  
2 and/or unfair activity prohibited by California Code of Regulations 11050 (5)(A).

3 **Failure to Pay "Split Shift" Premiums**

4 69. DEFENDANTS failure to pay REPRESENTATIVE PLAINTIFF and other  
5 AGGRIEVED EMPLOYEES one (1) hour's pay at the minimum wage in addition to the wages for  
6 that workday for any workday in which REPRESENTATIVE PLAINTIFF and other  
7 AGGRIEVED EMPLOYEES were scheduled for and required to work a "split shift" constitutes  
8 unlawful or unfair activity prohibited by California Labor Code 1198 and California Code of  
9 Regulations 11050(4)(C).

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

11 70. DEFENDANTS failure to timely pay wages to REPRESENTATIVE PLAINTIFF  
12 and other AGGRIEVED EMPLOYEES during their employment constitutes unlawful and/or  
13 unfair activity prohibited by California Labor Code section 204.

14 **Failure to Timely Pay Wages Upon Termination**

15 71. DEFENDANTS failure to timely pay wages to REPRESENTATIVE PLAINTIFF  
16 and other AGGRIEVED EMPLOYEES upon termination constitutes unlawful and/or unfair  
17 activity prohibited by California Labor Code sections 201, 202, and 203.

18 **Failure to Provide Information Required by the Wage Theft Prevention Act**

19 72. DEFENDANTS failure to provide basic information to REPRESENTATIVE  
20 PLAINTIFF and other AGGRIEVED EMPLOYEES related to the conditions of their pay and their  
21 rights regarding sick leave constitutes unlawful and/or unfair activity prohibited by California  
22 Labor Code section 2810.5(a)(1)(A)-(C).

23 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

24 73. DEFENDANTS failure to reimburse REPRESENTATIVE PLAINTIFF and other  
25 AGGRIEVED EMPLOYEES for necessary business-related expenses and costs constitutes  
26 unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

27 **Failure to Provide Notice of Paid Sick Time and Accrual**

28 74. DEFENDANTS failure to provide REPRESENTATIVE PLAINTIFF and other  
15.

1 AGGRIEVED EMPLOYEES that works for DEFENDANTS for more than 30 days with written  
2 notice setting the amount of sick leave available (or paid time off in lieu thereof) for use in their  
3 itemized wage statements or in a separate writing accompanying such statements constitutes  
4 unlawful and/or unfair activity prohibited by California Labor Code section 246.

#### 5 **Civil Penalties**

6 75. DEFENDANT ACUNA's actions, as outlined above, on behalf of DEFENDANTS  
7 that violated, or caused to be violated, the above-mentioned labor codes constitute unfair and/or  
8 unlawful activity in violation of California Labor Code section 558(c). California Labor Code  
9 section 558(c) specifically clarifies that penalties in this section are in addition to any other civil  
10 penalty.

11 76. Pursuant to California Labor Code section 2699, REPRESENTATIVE PLAINTIFF,  
12 individually, and on behalf of all AGGRIEVED EMPLOYEES, requests and is entitled to recover  
13 penalties from DEFENDANTS and each of them, for violations of the Labor Code as more fully  
14 described herein according to proof, interest, attorneys' fees and costs pursuant to California Labor  
15 Code section 218.5, including but not limited to:

16 a. Penalties under California Labor Code section 2699 in the amount of a  
17 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation,  
18 and two hundred dollars (\$200) for each aggrieved employee per pay period for each  
19 subsequent violation;

20 b. Penalties under California Code of Regulations Title 8 section 11010, et seq.  
21 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the  
22 initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay  
23 period for each subsequent violation;

24 c. Penalties under California Labor Code section 210 in addition to, and  
25 entirely independent and apart from, any other penalties provided in the California Labor  
26 Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay  
27 period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee  
28 per pay period for each subsequent violation; and

d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes, including, but not limited to, penalties pursuant to California Labor Code 558(a).

77. Pursuant to California Labor Code section 2699(i), civil penalties recovered shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the AGGRIEVED EMPLOYEES.

78. Further, REPRESENTATIVE PLAINTIFF is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

THEREFORE, REPRESENTATIVE PLAINTIFF and the individuals he seeks to represent request relief as described below:

**PRAYER**

THEREFORE, REPRESENTATIVE PLAINTIFF prays for judgment against DEFENDANTS, and Does 1 through 100, and each of them, as follows:

1. Statutory attorneys' fees and costs under PAGA and California Code of Civil Procedure Section 1021.5;
2. Statutory penalties under PAGA;
3. Costs of suit; and
4. Such further relief as the Court deems just and proper.

Dated: March 22, 2021

**HAIG B. KAZANDJIAN LAWYERS, APC.**

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