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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES (COMPLEX)

CHRISTOPHER ORNELAS, on behalf of
himself and all others similarly situated and
CHRISTOPHER NIETO, on behalf of
himself and all others aggrieved,

Plaintiffs,

vs.

TEKSYSTEMS, INC., a Maryland
Corporation; and DOES 1 through 10,
inclusive,

Defendants.

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JUL 23 2021

FILING WINDOW

Case No. 19STCV39944

**FIRST AMENDED CLASS AND PAGA
REPRESENTATIVE ACTION**

**COMPLAINT FOR RESTITUTION AND
CIVIL PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
("PAGA")**

- 1) VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW
("UCL") CALIFORNIA BUSINESS &
PROFESSIONS CODE §§ 17200, *et seq.*,
PREDICATED UPON VIOLATIONS OF
CALIFORNIA LABOR CODE
SECTIONS 510, 1194, and 2802
- 2) PAGA CIVIL PENALTIES FOR
FAILURE TO PAY MINIMUM,
REGULAR, AND OVERTIME WAGES
[LABOR CODE §§ 510, 1194, 1197,
1197.1, 1198, and 1199(c)]
- 3) PAGA CIVIL PENALTIES FOR
FAILURE TO REIMBURSE EXPENSES
[LABOR CODE §§ 2802 and 2804]
- 4) PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS

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- [LABOR CODE § 226 and 226.3]
- 5) **PAGA CIVIL PENALTIES FOR
FAILURE TO TIMELY PAY WAGES
DUE DURING AND UPON
TERMINATION OF EMPLOYMENT
[LABOR CODE §§ 201, 202, 203;**
- 6) **PAGA CIVIL PENALTIES FOR
FAILURE TO MAINTAIN ACCURATE
RECORDS
[LABOR CODE §§ 1174 and 1174.5]**

1 Plaintiffs CHRISTOPHER ORNELAS, on behalf of himself and all others similarly
2 situated, and CHRISTOPHER NIETO, on behalf of himself and all others aggrieved
3 (“Plaintiffs”), allege as follows:

4 **GENERAL ALLEGATIONS**

5 1. Plaintiff Christopher Ornelas (“Plaintiff ORNELAS”) bring this action as a
6 proposed class action against Defendants TEKSYSTEMS, INC., and DOES 1 through 10,
7 inclusive (“Defendants” or “TEK”) for restitution of unpaid wages and expenses incurred by all
8 security system installers in the State of California at any time from four years prior to the
9 commencement of the action to the date of commencement of trial (or such earlier date as
10 determined by the Court) (proposed “Class Period”). Because there was systematic and
11 uniform denial of pay for wages and expenses and the proposed Class has a well-defined
12 community of interest, Plaintiff brings this action pursuant to California Code of Civil
13 Procedure section 382 and seeks restitution under California’s Unfair Competition Law
14 (“UCL”) Business and Professions Code section 17200, et seq, as predicated on violations of
15 Labor Code sections 510, 1194, 2802 and applicable Industrial Welfare Commission (IWC)
16 Wage Order 4-2001, sections 7-9.

17 2. Plaintiff Christopher Nieto (“Plaintiff NIETO”) brings this action as a PAGA
18 representative action pursuant to California’s Private Attorneys General Act of 2004
19 (“PAGA”), Labor Code § 2698, et seq. Plaintiff NIETO complied with all PAGA Notice
20 requirements. Labor Code § 2699.3. A true and correct copy of the Notice sent to the California
21 Labor and Workforce Development Agency (“LWDA”) on March 12, 2021 is attached hereto
22 as **Exhibit 1**. The LWDA did not intervene within the statutory period nor did Defendant TEK
23 provide a notice of cure within the statutory period of time, and as such this Complaint is
24 amended to include civil penalties recoverable under the PAGA statute, to be recovered and
25 split with the LWDA in accordance with Labor Code section 2699. Plaintiff seeks civil
26 penalties for Defendants’ failure to: pay minimum, regular, and overtime wages; reimburse
27 expenses; provide accurate wage statements; pay wages due during and upon termination of
28 employment; and maintain accurate records during the “PAGA Period” (defined as March 12,

2020 until the commencement of trial in this matter).

3. Plaintiffs are informed and believe, and based thereon allege, the following:

a. TEK employed hourly paid non-exempt “security system installers” in the state of California during the proposed Class and PAGA Periods. Plaintiff ORNELAS was employed in said position as an installer of security systems to homes and businesses in the Los Angeles area during the proposed Class Period. ORNELAS separated from employment with TEK on or about July 10, 2016;

b. During Plaintiff ORNELASs employment at TEK, he was a resident of Hawthorne, California and was deemed an hourly paid non-exempt security system installer and paid an approximate hourly rate of \$25.00 per hour;

c. Plaintiff NIETO has been employed by TEK as a security systems installer from approximately 2015 to the present;

d. During Plaintiff NIETO’s employment at TEK, he has been a resident, and is currently a resident, of Los Angeles County, California and has been deemed an hourly paid non-exempt security system installer and paid an approximate hourly rate of \$32.00 per hour;

e. During the proposed Class and PAGA Periods, Plaintiff and other similarly situated and aggrieved “installers” were subject to uniform and systematic policies wherein they were not paid for all “hours worked” as defined by IWC Wage Order 4-2001, section 1(k). Specifically, Plaintiff and other similarly situated and aggrieved employees were required to travel to locations without payment for travel time to distant locations, sometime amounting to hours of unpaid minimum, regular and overtime wages in violation of Labor Code sections 510, 1194, and the Wage Order requirement to pay minimum, regular and overtime wages for all ‘hours worked” and subject to TEK’s control. TEK did not compensate for hours between installation locations (non-commute travel time) which amounted to as many as 10-15 unpaid hours worked, or more, each workweek. Plaintiffs are informed and believe that this practice was uniformly applied to all security system installers employed by TEK;

d. Plaintiff and other similarly situated and aggrieved employees were also

1 required to use their personal vehicles for travel, but were subject to a policy wherein TEK
2 uniformly and systematically failed to reimburse mileage and other vehicle related expenses in
3 violation of California Labor Code section 2802 and IWC Wage Order 4-2001, sections 8-9.
4 While TEK did supply some tools, Plaintiff and other similarly situated and aggrieved
5 employees had to purchase and replace tools necessary for proper installation, also without
6 reimbursement from TEK;

7 e. Plaintiff and other similarly situated and aggrieved employees suffered
8 actual harm as a direct and proximate result of Defendants' unlawful policies and practices by
9 failing to pay for all "hours worked" at the requisite minimum wage, regular rate of pay and/or
10 overtime rate of pay for shifts exceeding 8 hours per day or weeks where hours exceeded 40
11 hours, all in an amount according to proof.;

12 f. Plaintiff and other similarly situated and aggrieved employees suffered
13 actual harm as a direct and proximate result of Defendants' unlawful policies and practices for
14 failure to reimburse vehicle mileage and other travel expenses, as well as certain tool costs all
15 in an amount according to proof. Plaintiff estimates that mileage costs alone reached anywhere
16 from 250-500 miles per workweek without even basic IRS reimbursement amounts for business
17 use of personal vehicles.

18 **JURISDICTION AND VENUE**

19 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code
20 of Civil Procedure section 395. Defendants employ numerous Class Members and aggrieved
21 employees in Los Angeles County and in California, and each Defendant is within the
22 jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have
23 a direct effect on Plaintiffs and those similarly situated and aggrieved within the State of
24 California and within Los Angeles County. There is no federal question at issue as the issues
25 herein are based solely on California statutes and law, including the Labor Code, IWC Wage
26 Orders, Code of Civil Procedure, and Civil Code. Thus, the above entitled court maintains
27 appropriate jurisdiction to hear this matter.

28 5. Further, Business and Professions Code section 17203 provides that any person

1 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
2 Business and Professions Code section 17204 provides that any person acting on his or her own
3 behalf may bring an action in a court of competent jurisdiction. Thus, the above entitled court
4 maintains appropriate jurisdiction to hear this matter. By violating the California Labor Code,
5 Plaintiff has suffered injury in fact and loss, sufficient for standing to bring claims under
6 Business & Professions Code sections 17150, *et seq.*, and under Code of Civil Procedure
7 section 382. Based on information and belief, Plaintiffs allege that this entire action arises solely
8 under the laws of the State of California and applicable regulations of the health, safety, and
9 wages of the employees residing in the State of California. Plaintiffs allege, on information and
10 belief, that no federal question is raised and that the Class Action Fairness Act (“CAFA”), 28
11 U.S.C. section 1332(d), does not apply, or in the alternative, that exceptions for local case or
12 controversy under CAFA do apply and prohibit removal of the action the federal court. Since
13 TEK has headquarters in California, there is no diversity of citizenship for purposes of removal
14 of this action to federal court. Further, PAGA civil penalty actions are not subject to federal
15 jurisdiction.

16 **PARTIES**

17 **Plaintiff**

18 6. At all relevant times, Plaintiff CHRISTOPHER ORNELAS was a resident of the
19 State of California in the municipality of Hawthorn within Los Angeles County. Plaintiff was
20 employed by Defendants in the state of California as an hourly non-exempt “security system
21 installer” until approximately July 10, 2016. Like all others similarly situated in California,
22 Plaintiff was subject to the same pay and expense reimbursement policies implemented by TEK
23 that resulted in the loss of wages and expenses, and has in fact suffered financial harm by
24 TEK’s unfair, illegal and deceptive business acts and practices under the UCL and has standing
25 to bring this claim on behalf of himself and other similarly situated employees.

26 7. At all relevant times, Plaintiff CHRISTOPHER NIETO has been resident of the
27 State of California in Los Angeles County. Plaintiff has been employed by Defendants as an
28 hourly non-exempt “security system installer” from approximately 2015 to the present. Like all

1 others aggrieved in California, Plaintiff was subject to the same illegal pay, wage statement,
2 and expense reimbursement policies implemented by TEK, and has standing to bring a
3 representative action on behalf of himself and other aggrieved employees.

4 **Defendants**

5 8. Defendant TEKSYSTEMS, INC. is a Maryland corporation which, at all times
6 during the Class Period, engaged in business and employed Plaintiff and other members of the
7 Plaintiff Class in California and Los Angeles County.

8 9. Plaintiff is unaware of the true names, capacities, relationships of the
9 Defendants sued as DOES 1 through 10, or the extent of their participation in the conduct
10 alleged herein, but is informed and believes, and thereon alleges, that said Defendants are
11 legally responsible for the wrongful conduct alleged herein, and therefore sues these
12 Defendants by such fictitious names. Plaintiff will amend this complaint when their true names
13 and capacities are ascertained. This is permitted by law pursuant to California Code of Civil
14 Procedure section 474.

15 10. Plaintiff is informed and believes, and based thereon alleges, that each
16 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
17 other members of the Class, and exercised control over their wages, hours, and working
18 conditions. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted in
19 all respects pertinent to this action as the agent of the other Defendants, carried out a joint
20 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant
21 is legally attributable to the other Defendants.

22 11. Any person who is a managing agent, whether known now or later, named as a
23 DOE Defendant is personally liable for civil penalties and wages pursuant to California Labor
24 Code section 558.1, which provides: "Any employer or other person acting on behalf of an
25 employer, who violates, or causes to be violated, any provision regulating minimum wages or
26 hours and days of work in any order of the Industrial Welfare Commission, or violates, or
27 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as
28 the employer for such violation." See, *Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809, 238

1 Cal. Rptr. 3d 465 (petition for review denied, January 16, 2019) and *Turman v. Superior Court*
2 (2017) 17 Cal.App.5th 969.

3 **CLASS ALLEGATIONS**

4 12. Plaintiff brings this action on behalf of himself and all other similarly-situated
5 persons as a class action pursuant to California Code of Civil Procedure section 382. Plaintiff
6 seeks to represent a Plaintiff Class and subclasses composed of and defined as follows:

7 **PLAINTIFF CLASS:**

8 All persons in the State of California who were employed by TEKSYSTEMS,
9 INC. and DOES 1 through 10, inclusive (“Defendants” or “TEK”) as hourly
10 paid non-exempt “security system installers” at any time from four years prior
11 to the commencement of this action to the date of commencement of trial (or
12 such earlier date as determined by the Court (the proposed “Class Period”).

13 **Subclass One: The Unpaid Wage Subclass:**

14 All members of the Plaintiff Class who as a result of Defendants’ pay policies
15 and practices were not paid for all “hours worked” at either minimum wage,
16 their regular rate of pay and/or overtime rate of pay for overtime eligible shifts,
17 and who are owed restitution in an amount according to common proof.

18 **Subclass Two: The Expense Reimbursement Subclass:**

19 All members of the Plaintiff Class who as a result of Defendants’ business
20 expense policies and practices were not reimbursed mileage and tool
21 expenditures necessary to perform installations and are owed restitution in an
22 amount according to common proof.

23 13. Plaintiff reserves the right under Rule 3.765(b), California Rules of Court, to
24 amend or modify the Class description with greater specificity or further division into
25 subclasses or limitation to particular issues.

26 14. This action has been brought and may be properly maintained as a class action
27 under the provisions of California Code of Civil Procedure section 382 because there is a well-
28 defined community of interest in the litigation and the proposed Class is easily ascertainable.

Numerosity and Ascertainability

15. The members of the Plaintiff Class are sufficiently numerous that individual
joinder of all of them as Plaintiffs is impracticable. While the exact number of the Plaintiff
Class Members is unknown to Plaintiff at this time, Plaintiff is informed and believes, and

1 based thereon alleges, that are at least 25 proposed Plaintiff Class Members, who, at all relevant
2 times, were employed in the State of California. All Plaintiff Class Members are readily
3 ascertainable by review of records required to be maintained by TEK under California law and
4 applicable regulations, and who were not subject to arbitration/class action waiver agreements.

5 **Commonality**

6 16. There are questions of law and fact common to the Plaintiff Class that
7 predominate over any questions affecting only individual Plaintiff Class Members. These
8 common questions of law and fact include, without limitation:

9 a. Whether Defendants violated Labor Code sections 510, 1194, and the
10 applicable IWC Wage Order and owe Plaintiff Class Members restitution under the UCL for
11 failing to compensate for all hours worked during intra-day travel between installation locations
12 during the proposed Class Period.

13 b. Whether Defendants violated Labor Code section 2802 and the
14 applicable provisions of the IWC Wage Order and owe Plaintiff Class Members restitution
15 under the UCL for failing to reimburse mileage and other travel and tool expenses incurred by
16 Class Members during the proposed Class Period.

17 **Adequacy of Representation and Typicality:**

18 17. Plaintiff has agreed to serve as representatives of all similarly-situated
19 employees to raise common claims. Plaintiff understands that he owes a fiduciary obligation to
20 obtain competent counsel and take actions to promote, advance and prevail on the claims being
21 made, not just individually, but for the collective group of employees as a whole. Plaintiff has
22 been informed of her duties as a proposed class representative and has agreed to fairly and
23 adequately represent and protect the interests of the members of the Plaintiff Class. Plaintiff has
24 suffered harm and loss of money in a similar manner as the proposed Plaintiff Class with the
25 only variation being the amount of loss and damage suffered by individual employees as a
26 result of Defendants' common, uniform, and systematic practice. Plaintiff is informed and
27 believes that the law firms of Cohelan Khoury & Singer and Mesriani Law Group, APLC are
28 comprised of competent and experienced attorneys who regularly litigate large employment

1 class actions. The claims of Plaintiff are typical of the claims of the proposed Plaintiff Class.
2 Plaintiff has suffered the exact harm as result of uniform and systematic policies, conduct, and
3 practices of the Defendants. Plaintiff and all members of the proposed Plaintiff Class sustained
4 injuries and damages arising out of and caused by the Defendants' common course of conduct
5 in violation of laws, regulations that have the force and effect of law, and statutes as alleged.

6 **Superiority of Class Action/Manageability**

7 18. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy. Individual joinder of all Plaintiff Class Members is not
9 practicable, and questions of law and fact common to the Plaintiff Class predominate over
10 questions affecting only individual Plaintiff Class Members. Each Plaintiff Class Member has
11 been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or
12 practice of failing to pay for all hours worked and to reimburse necessary travel and tool
13 expenditures. A Class action will allow those similarly situated to litigate their claims in the
14 most efficient and economical manner for the parties and the judicial system. Plaintiff is
15 unaware of any difficulties that are likely to be encountered in the management of this action
16 that would preclude its maintenance as a class action. Further, this class action is manageable
17 because all determinations can be made from a representative sampling or review of
18 Defendants' corporate pay records, employee records, and wage statement records to show
19 violations of law and the amounts owed to each employee in the proposed Plaintiff Class. To
20 the extent there are any individualized inquiries, such inquiries can be minimized and managed
21 by resort to statistical analysis and representative evidence and testimony.

22 **FIRST CAUSE OF ACTION**

23 **UNFAIR COMPETITION PURSUANT TO BUSINESS AND PROFESSIONS CODE §§**
24 **17200-17204 PREDICATED ON THE VIOLATION CALIFORNIA LABOR CODE**
25 **SECTIONS 510,1194, 1194.2, 1197.1, 2802 and applicable PROVISIONS OF IWC**
26 **WAGE ORDER 4-2001**
(On Behalf of Plaintiff Christopher Ornelas and the Plaintiff Class against each
Defendant)

27 19. Plaintiff ORNELAS incorporates the preceding paragraphs of this Complaint
28 expressly herein by this reference as if all prior paragraphs were set forth in full.

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

9 21. Labor Code section 1194(a) states: “Notwithstanding any agreement to work for
10 a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
11 compensation applicable to the employee is entitled to recover in a civil action the unpaid
12 balance of the full amount of this minimum wage or overtime compensation, including interest
13 thereon, reasonable attorney’s fees, and costs of suit.”

14 22. IWC Wage Order 4-2001 section 2(K) defines all “hours worked” as: “the time
15 during which an employee is subject to the control of an employer, and includes all the time the
16 employee is suffered or permitted to work, whether or not required to do so.”

17 23. IWC Wage Order 4-2001 requires that all hours worked be compensated by
18 payment of at least the applicable California Minimum Wage.

19 24. California Labor Code section 2802 provides: “(a) An employer shall indemnify
20 his or her employee for all necessary expenditures or losses incurred by the employee in direct
21 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
22 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
23 believed them to be unlawful. (b) All awards made by a court or by the Division of Labor
24 Standards Enforcement for reimbursement of necessary expenditures under this section shall
25 carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date
26 on which the employee incurred the necessary expenditure or loss. (c) For purposes of this
27 section, the term ‘necessary expenditures or losses shall include all reasonable costs, including,
28 but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this

1 section.” Labor Code section 2804 provides that an employee may not waive his or her right to
2 these reimbursements under Labor Code section 2802.

3 25. IWC Wage Order 4-2001, section 8 provides in pertinent part: No employer
4 shall make any deduction from the wage or require any reimbursement from an employee for
5 any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage,
6 breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the
7 employee.

8 26. IWC Wage Order 4-2001, section 9 provides in pertinent part: “When uniforms
9 are required by the employer to be worn by the employee as a condition of employment, such
10 uniforms shall be provided and maintained by the employer. The term —uniforml includes
11 wearing apparel and accessories of distinctive design or color. NOTE: This section shall not
12 apply to protective apparel regulated by the Occupational Safety and Health Standards Board.
13 (B) When tools or equipment are required by the employer or are necessary to the performance
14 of a job, such tools and equipment shall be provided and maintained by the employer, except
15 that an employee whose wages are at least two (2) times the minimum wage provided herein
16 may be required to provide and maintain hand tools and equipment customarily required by the
17 trade or craft.”

18 27. California Business and Professions Code § 17200, *et seq.*, commonly referred
19 as the Unfair Competition Law or “UCL,” prohibits “any unlawful, unfair or fraudulent
20 business act or practice.” Unlawful business acts are those acts which are in violation of any
21 federal, state, or municipal statutes or codes, as well as state and federal regulations. As
22 elaborated above Defendants’ failure to properly pay their employees’ wages/expenses violates
23 many provisions of the California Labor Code and applicable regulations of hours and wages as
24 promulgated by the IWC.

25 28. Each of the identified statutes and regulations provide lawful basis to pursue
26 restitution from Defendants under the UCL. See, *Cortez v. Purolator Air Filtration Products*
27 *Co.*, 23 Cal.4th 163 (2000) [holding that Labor Code violations serve as sufficient statutory
28 predicate to recover restitution for unpaid wages.] Same, *Gattuso v. Harte-Hanks Shoppers*,

1 *Inc.*, 42 Cal. 4th 554 (2007).

2 29. Plaintiff and members of the Unpaid Wages Subclass were “employees” of
3 Defendants and were to be paid as hourly non-exempt security system installers for all “hours
4 worked” and subject to Defendants’ control. Even though travel from place-to-place was a
5 requirement of employment, TEK and Doe Defendants failed to pay for intra-day travel time
6 and had a policy that refused to compensate for such time on either payment of a minimum
7 wage, regular wage and/or overtime rates for applicable shifts. This amounted to a violation of
8 Labor Code section 510, 1194, as well as various provisions of IWC Wage Order 4-2001, and
9 resulted in underpayment of wages. Plaintiff seeks restitution of such wages as against
10 Defendants, in an amount according to proof.

11 30. Similarly, Plaintiff and members of the Expense Reimbursement Subclass were
12 subjected to a uniform and systematic policy that intra-day mileage was not reimbursed to
13 installers and certain tool acquisition and replacement costs were born by the installers, also
14 without any policy by Defendants to reimburse for such reasonable and necessary expenditures.
15 Accordingly, this conduct violates Labor Code section 2802 and IWC Wage Order 4-2001,
16 sections 8-9 and results in Defendants liability for restitution of such expenses to the Plaintiff
17 and the impacted members of the Plaintiff Class in an amount according to proof.

18 31. Plaintiff and members of the Plaintiff Class are entitled to recover the amount of
19 wages and benefits they lost as a result, plus interest as restitution, in an amount according to
20 proof.

21 32. Under Labor Code sections 1194 and 2802, Plaintiff and members of the
22 Plaintiff Class are entitled to recover reasonable attorney’s fees and costs. Alternatively,
23 Plaintiff will seek attorney’s fees to the extent permitted and provided for providing a public
24 benefit pursuant to Code of Civil Procedure section 1021.5 in an amount according to proof and
25 subject to Court approval.

26 33. To the extent, if any, that there exists a purported lawful and enforceable
27 alternative dispute resolution “agreement” binding upon Plaintiff, Plaintiff limits recovery
28 sought in this cause of action to declaratory, injunctive, or other preliminary or permanent

1 injunctive relief to the extent permitted by *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 956,
2 and will seek attorney's fees to the extent permitted by California Code of Civil Procedure
3 section 1021.5, based on public benefit obtained, lodestar and subject to Court approval.

4 **SECOND CAUSE OF ACTION**

5 **PAGA CIVIL PENALTIES FOR FAILURE TO PAY MINIMUM, REGULAR, AND**
6 **OVERTIME WAGES**

7 **[LABOR CODE §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c)]**

8 **(On Behalf of Plaintiff Christopher Nieto and Other Aggrieved Employees against each**
9 **Defendant)**

10 34. Plaintiff NIETO incorporates the preceding paragraphs of this Complaint
11 expressly herein by this reference as if all prior paragraphs were set forth in full.

12 35. Plaintiff NIETO has complied with all exhaustion and notice requirements as set
13 for in Labor Code sections 2698, *et seq.* to proceed as a representative of the State of California
14 to collect civil penalties to the extent permitted by law for Plaintiff NIETO and each of the
15 aggrieved employees.

16 36. Labor Code section 1197 provides: "The minimum wage for employees fixed by
17 the commission or by any applicable state or local law, is the minimum wage to be paid to
18 employees, and the payment of a lower wage than the minimum so fixed is unlawful. This
19 section does not change the applicability of local minimum wage laws to any entity."

20 37. Labor Code section 1197.1 provides: "Any employer or other person acting
21 either individually or as an officer, agent, or employee of another person, who pays or causes to
22 be paid to any employee a wage less than the minimum fixed by an order of the commission
23 shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the
24 employee, and any applicable penalties imposed pursuant to Section 203. For any initial
25 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid
26 employee for each pay period for which the employee is underpaid.

27 38. Labor Code section 1198 provides: "The maximum hours of work and the
28 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

1 unlawful.”

2 39. During the PAGA Period, Plaintiff NIETO and other aggrieved employees not
3 paid wages for all hours they worked for Defendants, including minimum, regular, and
4 overtime wages for time spent taking inventory. Plaintiff NIETO estimates that during the
5 course of his employment with Defendants, he spent approximately 10 hours taking inventory,
6 time for which he did not receive compensation. Recent updates to the inventory process have
7 improved the situation over the last few months, but the allotment of time for inventory still
8 falls short of actual time necessary to document and report inventory.

9 40. As a direct and proximate result of Defendants’ unlawful conduct, as alleged
10 herein, Plaintiff NIETO and other aggrieved employees have been deprived, and continue to be
11 deprived, of minimum, regular, and overtime wages for time worked or spent under
12 Defendants’ control.

13 41. Accordingly, Defendants violated Labor Code sections 510, 1194, 1194.2, 1197,
14 1197.1, 1198, and 1199(c) in addition to IWC Wage Order 4-2001. Labor Code section 2699.5
15 lists Labor Code sections 510, 1194, 1197, 1197.1, 1198, and 1199 as statutes for which default
16 civil penalties may be recovered under Labor Code section 2699(f)(2). The nature, extent, and
17 amount of civil penalties for which Defendants are liable is presently unknown but can be
18 calculated based on pay period and work week data for ascertainable and identifiable
19 “aggrieved employees” who worked as hourly paid non-exempt “security system installers.”

20 42. Civil penalties may be recovered pursuant to Labor Code section 2699(f)(2)
21 which states in pertinent part: “(a) Any employer or other person acting on behalf of an
22 employer who violates, or causes to be violated, a section of this chapter or any provision
23 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
24 subject to a civil penalty in an amount according to proof.

25 43. To the extent Plaintiff NIETO and other potentially aggrieved employees have
26 been impacted, Plaintiff NIETO is entitled to recover civil penalties on behalf of the LWDA
27 and also to seek reasonable attorneys’ fees and costs in accordance with Labor Code section
28 2699(g) and/or California Code of Civil Procedure section 1021.5, subject to court approval.

1 **THIRD CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR FAILURE TO REIMBURSE EXPENSES**
3 **[LABOR CODE §§ 2802 and 2804]**
4 **(On Behalf of Plaintiff Christopher Nieto and Other Aggrieved Employees against each Defendant)**

5 44. Plaintiff NIETO incorporates the preceding paragraphs of this Complaint
6 expressly herein by this reference as if all prior paragraphs were set forth in full.

7 45. Plaintiff NIETO has complied with all exhaustion and notice requirements as set
8 for in Labor Code sections 2698, *et seq.* to proceed as a representative of the State of California
9 to collect civil penalties to the extent permitted by law for Plaintiff NIETO and each of the
10 aggrieved employees.

11 46. During the PAGA Period, Defendants required Plaintiff NIETO to use his own
12 garage space to maintain TEK's equipment inventory, without any reimbursement for the use
13 of the 20 by 25 foot storage space. Plaintiff NIETO estimates that the same amount of space at
14 a commercial storage facility would cost over \$100 per month. On information and belief,
15 Defendants required other aggrieved employees to do the same.

16 47. During the PAGA Period, Defendants also did not reimburse Plaintiff NIETO
17 for expenses he incurred performing work-related duties, including expenses for tools, personal
18 cell phone usage, laptops used in the field, mileage and gas, as well as rent on his garage space
19 used to store Defendants' inventory boxes. On information and belief, Defendants did not
20 reimburse other aggrieved employees for these expenses.

21 48. During the PAGA Period, Plaintiff NIETO estimates he spent at least \$1,000 on
22 tools necessary to perform his work duties for Defendants. Plaintiff NIETO further alleges that
23 he spent an additional \$500 on tools for work in the field and for wear and tear on drill bits.
24 Plaintiff NIETO estimates his tool expenditures at \$120 per month.

25 49. During the PAGA Period, Plaintiff NIETO alleges he was required to use his
26 personal cell phone for work-related duties. He estimates his monthly cell phone costs at \$80
27 per month. Plaintiff NIETO also alleges he was not reimbursed for mileage nor for gas
28 expenses incurred while driving his personal vehicle to and from work locations. Plaintiff

1 NIETO estimates he spent roughly \$25 per day on gas to travel to and from work sites. For a 5-
2 day workweek, that totals approximately \$125 per week spent on gas (\$625 per month).
3 Plaintiff NIETO typically worked 6 days per week during the majority of 2020, thus incurring
4 approximately \$725 in expenses for gas during the year 2020.

5 50. During the PAGA Period, Plaintiff NIETO further alleges that a laptop was
6 required in the field to complete his work tasks. The use of internet port forwarding and
7 cameras was necessary, and the expense to obtain basic equipment is over \$800 plus software
8 and maintenance costs. Plaintiff NIETO estimates he spent approximately \$1,200 related to his
9 laptop and necessary software. Lastly, Plaintiff NIETO was ultimately required to rent a
10 storage unit to house Defendants' inventory boxes, the cost of which was not reimbursed by
11 Defendants.

12 51. Finally, Plaintiff NIETO and other aggrieved employees were required to enter
13 into the homes of Defendants' customers during the 2020 COVID-19 pandemic, but
14 Defendants did not provide personal protective equipment ("PPE"), such as gloves and masks,
15 to reasonably ensure his health and safety while carrying out his work duties. Plaintiff NIETO
16 had to purchase these items himself and was not reimbursed for these expenses. During the
17 onset of the pandemic, Plaintiff and other aggrieved employees had to pay for masks, footwear,
18 gloves, hand cleansers, and other PPE materials to safely perform work. Plaintiff NIETO
19 estimates that he paid over \$500 to \$1,000 to obtain necessary PPE, all without any
20 reimbursement by Defendants.

21 52. Consequently, during the PAGA Period, Defendants failed to reimburse Plaintiff
22 NIETO and other aggrieved employees for all expenses incurred while working for Defendants,
23 including but not limited to, tools, personal cell phone usage, laptops used in the field, mileage
24 and gas, protective equipment, PPE materials, and rent on garage space necessary to store
25 Defendants' inventory boxes.

26 53. As a direct and proximate result of Defendants' unlawful conduct, as alleged
27 herein, Plaintiff NIETO and other aggrieved employees have been deprived, and continue to be
28 deprived, of reimbursements for work-related expenses they incurred in service of Defendants.

1 54. Accordingly, Defendants violated Labor Code section 2802. Labor Code section
2 2699.5 lists Labor Code section 2802 as a statute for which default civil penalties may be
3 recovered under Labor Code section 2699(f)(2). The nature, extent, and amount of civil
4 penalties for which Defendants are liable is presently unknown but can be calculated based on
5 pay period and work week data for ascertainable and identifiable “aggrieved employees” who
6 worked as hourly paid non-exempt “security system installers.”

7 55. Civil penalties may be recovered pursuant to Labor Code section 2699(f)(2)
8 which states in pertinent part: “(a) Any employer or other person acting on behalf of an
9 employer who violates, or causes to be violated, a section of this chapter or any provision
10 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
11 subject to a civil penalty in an amount according to proof.

12 56. To the extent Plaintiff NIETO and other potentially aggrieved employees have
13 been impacted, Plaintiff NIETO is entitled to recover civil penalties on behalf of the LWDA
14 and also to seek reasonable attorneys’ fees and costs in accordance with Labor Code section
15 2699(g) and/or California Code of Civil Procedure section 1021.5, subject to court approval.

16 **FOURTH CAUSE OF ACTION**

17 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCURATE WAGE**
18 **STATEMENTS**

19 **[LABOR CODE §§ 226 and 226.3]**

20 **(On Behalf of Plaintiff Christopher Nieto and Other Aggrieved Employees against each**
21 **Defendant)**

22 57. Plaintiff NIETO incorporates the preceding paragraphs of this Complaint
23 expressly herein by this reference as if all prior paragraphs were set forth in full.

24 58. Plaintiff NIETO has complied with all exhaustion and notice requirements as set
25 for in Labor Code sections 2698, *et seq.* to proceed as a representative of the State of California
26 to collect civil penalties to the extent permitted by law for Plaintiff NIETO and each of the
27 aggrieved employees.

28 59. Labor Code Section 226(a) provides, in pertinent part: “An employer,
semimonthly or at the time of each payment of wages, shall furnish to his or her employee...an
accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked

1 by the employee... (5) net wages earned...and (9) all applicable hourly rates in effect during
2 the pay period and the corresponding number of hours worked at each hourly rate by the
3 employee.”

4 60. During the PAGA Period, because Defendants failed to record all time actually
5 worked by Plaintiff NIETO and other aggrieved employees, including for time spent taking
6 inventory, wage statements issued by Defendants failed to reflect the actual total hours worked,
7 gross and net wages earned, and the number of hours worked at each corresponding rate of pay.

8 61. As a direct and proximate result of Defendants’ unlawful conduct, as alleged
9 herein, Plaintiff NIETO and other aggrieved employees have been deprived, and continue to be
10 deprived, of accurate, itemized wage statements.

11 62. Accordingly, Defendants violated Labor Code section 226. Labor Code section
12 2699.5 lists Labor Code section 226 as a statute for which default civil penalties may be
13 recovered under Labor Code section 2699(f)(2). Additionally, Labor Code section 226.3
14 provides for civil penalties for violations of Labor Code section 226(a). The nature, extent, and
15 amount of civil penalties for which Defendants are liable is presently unknown but can be
16 calculated based on pay period and work week data for ascertainable and identifiable
17 “aggrieved employees” who worked as hourly paid non-exempt “security system installers.”

18 63. Civil penalties may be recovered pursuant to Labor Code section 2699(f)(2)
19 which states in pertinent part: “(a) Any employer or other person acting on behalf of an
20 employer who violates, or causes to be violated, a section of this chapter or any provision
21 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
22 subject to a civil penalty in an amount according to proof.

23 64. Civil penalties may also be recovered pursuant to Labor Code section 226.3,
24 which states in pertinent part: “Any employer who violates subdivision (a) of Section 226 shall
25 be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
26 violation in an initial or which the employer fails to provide the employee a wage deduction
27 statement or fails to keep the records required in subdivision (a) of Section 226. The civil
28 penalties provided for in this section are in addition to any other penalty provided by law.”

65. To the extent Plaintiff NIETO and other potentially aggrieved employees have been impacted, Plaintiff NIETO is entitled to recover civil penalties on behalf of the LWDA and also to seek reasonable attorneys' fees and costs in accordance with Labor Code section 2699(g) and/or California Code of Civil Procedure section 1021.5, subject to court approval.

FIFTH CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE DURING
AND UPON TERMINATION OF EMPLOYMENT
[LABOR CODE §§ 201, 202, 203, and 204
(On Behalf of Plaintiff Christopher Nieto and Other Aggrieved Employees against each Defendant)]**

66. Plaintiff NIETO incorporates the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full.

67. Plaintiff NIETO has complied with all exhaustion and notice requirements as set for in Labor Code sections 2698, *et seq.* to proceed as a representative of the State of California to collect civil penalties to the extent permitted by law for Plaintiff NIETO and each of the aggrieved employees.

68. Labor Code Section 204 requires employers pay all wages earned by employees twice monthly, on days designated in advance by the employer.

69. "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."

70. Labor Code Section 201 requires employers to make immediate payment of all wages earned by an employee who is discharged, and Labor Code Section 202 requires that such payment be made to employees who voluntarily quit within 72 hours.

71. Labor Code Section 203 provides: "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 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."

72. Because Defendants failed to pay all minimum, regular, and overtime wages

owed to Plaintiff NIETO and other aggrieved employees during the PAGA Period, Defendants failed to pay all wages due during employment to these employees and upon termination of employment to all of these employees whose employment ended during the PAGA Period.

73. As a direct and proximate result of Defendants' unlawful conduct, as alleged herein, Plaintiff NIETO and other aggrieved employees have been deprived, and continue to be deprived, of minimum, regular, and overtime wages for time worked or spent under Defendants' control and waiting time penalties.

74. Accordingly, Defendants violated Labor Code sections 201-204. Labor Code section 2699.5 lists Labor Code sections 201-204 as statutes for which default civil penalties may be recovered under Labor Code section 2699(f)(2). The nature, extent, and amount of civil penalties for which Defendants are liable is presently unknown but can be calculated based on pay period and work week data for ascertainable and identifiable "aggrieved employees" who worked as hourly paid non-exempt "security system installers."

75. Civil penalties may be recovered pursuant to Labor Code section 2699(f)(2) which states in pertinent part: "(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty in an amount according to proof.

76. To the extent Plaintiff NIETO and other potentially aggrieved employees have been impacted, Plaintiff NIETO is entitled to recover civil penalties on behalf of the LWDA and also to seek reasonable attorneys' fees and costs in accordance with Labor Code section 2699(g) and/or California Code of Civil Procedure section 1021.5, subject to court approval.

SIXTH CAUSE OF ACTION

PAGA CIVIL PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS [LABOR CODE §§ 1174 and 1174.5]

(On Behalf of Plaintiff Christopher Nieto and Other Aggrieved Employees against each Defendant)

77. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full.

1 78. Plaintiff Christopher Nieto has complied with all exhaustion and notice
2 requirements as set for in Labor Code sections 2698, *et seq.* to proceed as a representative of
3 the State of California to collect civil penalties to the extent permitted by law for Plaintiff and
4 each of the aggrieved employees.

5 79. Labor Code section 1174(d) provides, in pertinent part: “Every person
6 employing labor in this state shall [k]eep, at a central location in the state or at the plants or
7 establishments at which employees are employed, payroll records showing the hours worked
8 daily by and the wages paid to...employees employed at the respective plants or
9 establishments. These records shall be kept in accordance with rules established for this
10 purpose by the commission, but in any case shall be kept on file for not less than three years.”

11 80. During the PAGA Period, Defendants failed to record all accurate hours worked
12 by Plaintiff NIETO and other aggrieved employees and failed to record all accurate wages that
13 should have been paid based on these hours worked.

14 81. As a direct and proximate result of Defendants’ unlawful conduct, as alleged
15 herein, Plaintiff NIETO and other aggrieved employees have been deprived, and continue to be
16 deprived, of accurate timekeeping and payroll records.

17 82. Accordingly, Defendants violated Labor Code section 1174(d). Labor Code
18 section 2699.5 lists Labor Code section 1174(d) as a statute for which default civil penalties
19 may be recovered under Labor Code section 2699(f)(2). Additionally, Labor Code section
20 1174.5 provides for civil penalties for violation of Labor Code section 1174(d). The nature,
21 extent, and amount of civil penalties for which Defendants are liable is presently unknown but
22 can be calculated based on pay period and work week data for ascertainable and identifiable
23 “aggrieved employees” who worked as hourly paid non-exempt “security system installers.”

24 83. Civil penalties may be recovered pursuant to Labor Code section 2699(f)(2)
25 which states in pertinent part: “(a) Any employer or other person acting on behalf of an
26 employer who violates, or causes to be violated, a section of this chapter or any provision
27 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
28 subject to a civil penalty in an amount according to proof.

84. Civil penalties may also be recovered pursuant to Labor Code section 1174.5 which imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records.

85. To the extent Plaintiff NIETO and other potentially aggrieved employees have been impacted, Plaintiff NIETO is entitled to recover civil penalties on behalf of the LWDA and also to seek reasonable attorneys' fees and costs in accordance with Labor Code section 2699(g) and/or California Code of Civil Procedure section 1021.5, subject to court approval.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For certification of this action as a class action pursuant to C.C.P. § 382;
2. For designation of CHRISTOPHER ORNELAS as the Class Representative, and appointment of Cohelan Khoury & Singer as Counsel for the Plaintiff Class;
3. On the First Cause of Action: (a) For restitution of all unpaid wages and unreimbursed business expenses in an amount according to proof; and (b) for a declaratory judgment that the practices complained of herein are unlawful under appropriate state law pursuant to California Business & Professions Code sections 17200, *et seq.*;
4. On the Second Cause of Action: For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) for each pay period during the PAGA Period on the basis that Plaintiff Nieto and other aggrieved employees were not paid minimum, regular, and/or overtime wages or rates of pay as required by Labor Code sections 510, 1194, 1194.2, 1197, and 1197.1, *et seq.*, subject to the Court's discretion and to be distributed in a manner consistent with Labor Code section 2699(i) wherein 75% is to be distributed to the LWDA and 25% to the aggrieved employees, subject to Court approval;
5. On the Third Cause of Action: For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) for each pay period during the PAGA Period on the basis that Plaintiff Nieto and other aggrieved employees were not reimbursed for their business-related expenses as required by Labor Code section 2802, subject to the Court's discretion and to be distributed in a manner consistent with Labor Code section 2699(i) wherein 75% is to be distributed to the

1 LWDA and 25% to the aggrieved employees, subject to Court approval;

2 6. On the Fourth Cause of Action: For recovery of civil penalties related to
3 Defendants' failure to provide accurate and itemized wage statements for each pay period in the
4 PAGA Period pursuant to Labor Code section 2699(f)(2) as premised upon Labor Code section
5 226, and/or civil penalties as required by Labor Code section 226.3, subject to the Court's
6 discretion and to be distributed in a manner consistent with Labor Code section 2699(i) wherein
7 75% is to be distributed to the LWDA and 25% to the aggrieved employees, subject to Court
8 approval;

9 7. On the Fifth Cause of Action: For recovery of civil penalties pursuant to Labor
10 Code section 2699(f)(2) premised on Labor Code sections 210 and 203, for each aggrieved
11 employee who was not timely paid their wages for hours worked for each workweek or pay
12 period during the PAGA Period, and for those terminated or separated from employment, who
13 were not paid their final pay in at least 72 hours from the date of termination/separation, as
14 shown by Defendants' employment records, in an amount according to proof based on the
15 number of pay periods for all aggrieved employees during the PAGA Period. Said penal ties
16 are subject to the Court's discretion and are to be distributed in a manner consistent with Labor
17 Code section 2699(i) wherein 75% is to be distributed to the LWDA and 25% to the aggrieved
18 employees, subject to Court approval;

19 8. On the Sixth Cause of Action: For recovery of civil penalties related to
20 Defendants' failure to maintain accurate records for each pay period in the PAGA Period
21 pursuant to Labor Code section 2699(f)(2) as premised upon Labor Code section 1174, and/or
22 civil penalties as required by Labor Code section 1174.5, subject to the Court's discretion and
23 to be distributed in a manner consistent with Labor Code section 2699(i) wherein 75% is to be
24 distributed to the LWDA and 25% to the aggrieved employees, subject to Court approval;

25 9. Attorneys' fees and costs of suit, including necessary litigation costs, expert fees
26 and/or fees for an accounting pursuant to California Labor Code sections 2699(g), 1194 and
27 2802, as well as California Code of Civil Procedure section 1021.5, or other applicable state
28 law;

1 10. For such other legal and/or equitable relief as this Court deems necessary, just,
2 and proper.

3 **COHELAN KHOURY & SINGER**
4 **MESRIANI LAW GROUP, APLC**

5 Dated: July 23, 2021

6 By:  _____
7 J. Jason Hill, Esq.
8 Counsel for Plaintiffs CHRISTOPHER
9 ORNELAS and CHRISTOPHER NIETO
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EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
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(*Also admitted in the District of Columbia)
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JEFF GERACI
J. JASON HILL†
KRISTINA DE LA ROSA
ROSEMARY KHOURY

(† Also admitted in Illinois)

March 12, 2021

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Teksystems, Inc.
7337 Race Road
Hanover, MD 21076

Teksystems, Inc.
c/o CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act (“PAGA”), sent by Christopher Nieto on behalf of himself and all other aggrieved employees of Teksystems, Inc. in the State of California

Dear PAGA Administrator and Teksystems, Inc.:

Mr. Christopher Nieto (“Mr. Nieto” or “Claimant”) submits notice of Labor Code and Industrial Welfare Commission Wage Order violations by Teksystems, Inc. (“Teksystems” or “Employer”). Mr. Nieto seeks to represent himself and other aggrieved employees in a Private Attorneys General Act (“PAGA”) action against Teksystems pursuant to Labor Code sections 2698, *et seq.* For purposes of this notice, “aggrieved employees” includes all of Employer’s non-exempt California employees paid, at least in part, with commissions, and subject to the same or similar policies described below.

FACTUAL STATEMENT

Mr. Nieto, a California resident, worked for Teksystems in California as a security systems installer from approximately 2015 to the present, though there was a period where he left Teksystems and later returned to employment that will be shown by his employment records.

Mr. Nieto was not paid for all hours worked for the Employer, including minimum, regular, and overtimes wages related to time spent taking inventory. Claimant estimates that during the course of his employment with the Employer, he spent approximately 10 hours taking inventory, time which he did not receive compensation. Recent updates to the inventory process have improved the situation over the last few months, but the allotment of time for inventory still falls short of actual time necessary to document and report same.

Claimant was also required, for a time, to use his own garage space, free of charge, to maintain Teksystem's equipment inventory, without any reimbursement of the use of the 20x25 foot storage space. Claimant estimates that the same amount of space at a commercial storage facility would cost over \$100 per month.

The Employer also did not reimburse Mr. Nieto for expenses incurred for work-related duties, including tools, personal cell phone usage, laptops used in the field, mileage and gas, as well as rent on his garage space used to store the Employer's inventory boxes.

Claimant estimates he spent at least \$1,000 on tools necessary to perform his work duties for the Employer. Claimant further alleges that he spent an additional \$500 on tools for work in the field and for wear and tear on drill bits. Claimant estimates his tool expenditures at \$120 per month.

Claimant alleges he was required to use his personal cell phone for work-related duties. He estimates his monthly cell phone costs at \$80 per month. Claimant also alleges he was not reimbursed for mileage nor for gas incurred while driving his personal vehicle to and from work locations. Claimant estimates he spent roughly \$25 per day on gas to travel to and from work sites. For a 5-day workweek, that totals approximately \$125.00 per week spent on gas (\$625 per month). Claimant typically worked 6 days per week during the majority of 2020, thus incurring approximately \$725.00 for gas during the year 2020.

Claimant further alleges that a laptop was required in the field to complete his work tasks. The use of internet port forwarding and cameras was necessary, and the expense to obtain basic equipment is over \$800 plus software and maintenance costs. Claimant estimates he spent approximately \$1,200 related to his laptop and necessary software. Lastly, Claimant was ultimately required to rent a storage unit to house the Employer's inventory boxes, the cost of which was not reimbursed by the Employer.

Finally, Claimant and other aggrieved employees were required to enter into the homes of the Employer's customers during the 2020 COVID-19 pandemic, but the Employer did not provide personal protective equipment ("PPE"), such as gloves and masks, to reasonably ensure his health and safety while carrying out his work duties. Claimant had to purchase these items himself and was not reimbursed for these expenses. During the onset of Covid, Claimant and others had to pay a premium to obtain masks, footwear, gloves, hand cleansers, and other PPE materials to safely perform work. Claimant estimates that he paid over \$500 to \$1,000 to obtain necessary PPE, all without any reimbursement by the Employer.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code sections 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

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 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 1198 provides: “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.”

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)(2), provides that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

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 lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who 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, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for

which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

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 and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employer violates Labor Code sections 218, 510, 1194, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it does not pay Claimant and other aggrieved employees all minimum, regular, and overtime wages for all hours worked. The Employer fails to pay for all hours worked, including hours worked by Claimant and other aggrieved employees while conducting inventory.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE EXPENSES (Labor Code sections 2802 and 2804)

California Labor Code section 2802(a) states: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(b) states: “All awards made by a Court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” The exact amount of interest is in an amount to be proven at time of trial.

Furthermore, Labor Code section 2802(c) states: “For the purposes of this section, the term ‘necessary expenditures or losses shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee in enforcing the rights granted by this section.”

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employer failed to fulfill these obligations when it failed to reimburse Claimant and other aggrieved employees for all expenses incurred while working for the Employer, including but not limited to, tools, personal cell phone usage, laptops used in the field, mileage and gas, protective equipment, PPE materials, and rent on garage space necessary to store the Employer's inventory boxes.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Order.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
(Labor Code sections 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.”

The wage statements of employees who are compensated on a piece-rate basis during a pay period shall also comply with the requirements of Labor Code section 226.2(a)(2)(A)-(B):

(2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

(A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

(B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

Furthermore, Labor Code section 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.”

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.

The Employer failed to provide Claimant with an accurate, timely itemized wage statement complying with the requirements of the Labor Code and applicable IWC Wage Order. Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

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

(Labor Code sections 201, 202, 203, 204, 256, 1198, and 2699)

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, 201.6, 201.8, 201.9, 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 themselves to avoid payment to them, or who refuses to receive the payment when fully tendered to them, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which the employee so avoids payment.”

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

As detailed above, the Employer fails to pay Claimant and other aggrieved employees all wages that were due and owing to them including regular, minimum, and overtime wages within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. Additionally, the Employer fails to timely pay aggrieved employees all wages due upon separation of employment. As a result, the Employer violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code sections 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 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Accordingly, Claimant will pursue *civil penalties* pursuant to the PAGA or other lawful remedies for himself and other aggrieved employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA action.

DUTIES OF EMPLOYER

(Labor Code sections 1174, 1174.5, 1175, and 1198, and the Applicable 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. The Employer violated this requirement by its failure to list the correct rate of pay. 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 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.

The Employer fails to accurately record all accurate hours worked by Claimant and other aggrieved employees and fails to record all accurate wages to be paid.

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.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code sections 226(e) and 2699(g)(1))

Labor Code sections 226(e) and 2699(g)(1) give employees the right to recover in a civil action, 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 assessed. Accordingly, the Employer is liable for these items.

Labor Code section 226(e)(1) provides "[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

Labor Code section 2699(g)(1) provides "[e]xcept as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part."

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Claimant has already incurred costs and attorney's fees and will continue to incur costs as a result of the Employer's unlawful actions.

CONCLUSION

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.

Claimant requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Claimant will pursue claims for civil penalties and will seek all remedies available for violations of the Labor Code and the applicable Industrial Welfare Commission Wage Orders, including all available penalties set forth in Labor Code section 2699(f).

Sincerely,
COHELAN KHOURY & SINGER



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