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Attorneys for Defendant
AMERICAN RESIDENTIAL SERVICES, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

GERARDO ABUNDO, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

AMERICAN RESIDENTIAL SERVICES,
LLC, a Delaware corporation, and DOES 1-50,
inclusive,

Defendants.

Case No. 30-2021-01202607-CU-OE-CXC

Assigned for All Purposes to:
Hon. Melissa McCormick, Dept. CX104

**DECLARATION OF AMANDA C.
SOMMERFELD IN SUPPORT OF
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Date: May 8, 2025
Time: 2:00 p.m.
Dept: CX104
Reservation Number: 74450299

DECLARATION OF AMANDA C. SOMMERFELD

1
2 1. I am an attorney in good standing duly admitted to the State Bar of California, a
3 partner at Jones Day and counsel of record for Defendant AMERICAN RESIDENTIAL
4 SERVICES, LLC (“Defendant”). Except for those matters stated in information and belief, which
5 I am informed and believe are true and correct, I have personal knowledge of all matters set forth
6 herein. If called as a witness, I could and would testify to them competently.

7 2. This declaration is made in support of the Motion for PAGA Approval of
8 Settlement pursuant to Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et*
9 *seq.*, hereinafter “PAGA”) filed concurrently herewith.

10 3. Defendant is aware of two other pending actions that assert claims similar to those
11 asserted in the present matter and that may be affected by the terms of settlement.

12 4. Defendant discloses the representative action *Montano v. American Residential*
13 *Services LLC dba ARS Rescue Rooter* (“Montano”), which was filed on April 25, 2024 and is
14 currently pending in Los Angeles Superior Court (Case No. 24STSV10500). Defendant filed a
15 Notice of Related Case informing this Court of *Montano* on June 26, 2024. The parties in the
16 *Montano* action filed a Stipulation to Stay the case on October 3, 2024, while the parties pursue
17 arbitration of Montano’s claims. The *Montano* Court has not yet signed the parties’ stipulation.
18 The *Abundo* settlement would entirely resolve Montano’s PAGA claims providing for penalties.
19 A true and correct version of the *Montano* complaint is attached hereto as **Exhibit A**.

20 5. Defendant further discloses the representative and class action *Holmes v. ARS*
21 *American Residential Services of California, Inc.* (“Holmes”), which was filed on February 29,
22 2024 and is currently pending in Riverside Superior Court (Case No. CVRI2401096). Defendant
23 filed a Notice of Related Case informing this Court of *Holmes* on May 24, 2024. The individual
24 claims of Holmes are in arbitration. The *Holmes* Court held oral argument on whether the
25 remaining claims should be stayed pending arbitration and has not yet rendered a decision. The
26 *Abundo* settlement would entirely resolve Holmes’s PAGA claims providing for penalties. A true
27 and correct version of the *Holmes* complaint is attached hereto as **Exhibit B**.

6. Mediation in the present action took place prior to the filing of either *Holmes* or *Montano*, on February 14, 2024; the parties reached settlement in principle on February 14, 2024 and subsequently executed a settlement agreement on April 22, 2024.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that the declaration was executed on November 26, 2024, in Los Angeles, California.


Amanda C. Sommerfeld

EXHIBIT A

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Attorneys for Plaintiff

and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

NANCY MONTANO, individually, and on
behalf of all other aggrieved employees,

Plaintiff,

v.

AMERICAN RESIDENTIAL SERVICES,
L.L.C. dba ARS RESCUE ROOTER, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **24STCV10500**

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA")**

[California Labor Code § 2698 *et seq.*]

1 This is a representative action brought by NANCY MONTANO, individually and
2 on behalf of all other aggrieved employees (“Plaintiff”), relating to systemic violations of
3 California wage and hour laws by her employers AMERICAN RESIDENTIAL
4 SERVICES, L.L.C. dba ARS RESCUE ROOTER (“Defendant Residential”) (collectively
5 as “Defendants”). Plaintiff makes the following allegations on information and belief,
6 except as to allegations pertaining to Plaintiff individually, which are based on her
7 personal knowledge.

8 **INTRODUCTION**

9 1. Defendant Residential provides plumbing, home, and commercial
10 heating and air conditioning services. Defendant Residential is a limited liability
11 company.

12 4. As private, for-profit businesses, Defendants implemented common policies
13 and practices that have resulted in systemic violations of California’s wage and hour laws.
14 Defendants have failed to implement adequate practices to protect the rights of their
15 employees, particularly in light of the nature of their businesses, which is to maximize
16 profits.

17 5. Defendants attempt to maximize profits by among other methods,
18 understaffing their call centers resulting in systematic meal and rest period violations.

19 6. As a result of systematic policies and procedures, Defendants have violated
20 California’s wage and hour laws promulgated in the California Labor Code and all
21 applicable Industrial Welfare Commission (“IWC”) Wage Orders. For example,
22 Defendants also required its non-exempt employees, who are informed that the needs of
23 the businesses take top priority, such as answering any and all calls sent to the call center,
24 to work through meal and rest breaks, and to take untimely meal periods. Plaintiff and the
25 other aggrieved employees were not allowed to take meal periods unless they worked six
26 (6) hours or more. Moreover, Plaintiff and other aggrieved employees are not always
27 afforded full thirty (30) minute meal periods and are often under pressure to return to work
28 early since they are too understaffed to answer all the incoming calls at the call center. As

1 a result, Plaintiff and other aggrieved employees have been denied the ability to take the
2 meal and rest breaks that they were and are legally entitled to take.

3 7. Moreover, Defendants have uniformly failed to pay Plaintiff and other
4 aggrieved employees proper overtime wages due the fact that they improperly calculate the
5 regular rate of pay, and willfully turns a blind eye to off-the-clock work that Plaintiff and
6 other non-exempt employees perform as a direct consequence of Defendants' understaffing
7 and imposition of an unreasonable workload.

8 8. This case involves all non-exempt employees of Defendants who have
9 worked for Defendants in the State of California during the applicable limitations period
10 ("Statute of Limitations Period"). Hereinafter, these employees are referred to as
11 "Aggrieved Employees."

12 9. Plaintiffs seek to recover penalties for the Labor and Workforce Development
13 Agency ("LWDA"), on behalf of themselves and all other similarly situated Aggrieved
14 Employees under the Private Attorneys General Act ("PAGA") as a result of Defendants'
15 systematic violations of the law.

16 **JURISDICTION AND VENUE**

17 10. The Superior Court of the State of California has jurisdiction in this matter
18 because Plaintiff is a citizen and resident of the State of California, and Defendants are
19 citizens and residents of, and/or regularly conduct business in, the State of California.

20 11. Venue is proper in this judicial district and the County of San Bernardino,
21 California because Plaintiff resides in the County of San Bernardino and Defendants'
22 violation of the California Labor Code occurred in the County of Riverside and many of
23 Defendants unlawful actions and omissions, as set alleged herein, occurred in the County
24 of Riverside.

25 12. Defendants employed Plaintiff and other aggrieved employees within the
26 State of California and the unlawful acts alleged herein have a direct effect on Plaintiff and
27 other aggrieved employees.

28 13. The State of California, County of Los Angeles, has jurisdiction in this matter

1 because the individual claims are under the seventy-five thousand dollar (\$75,000.00)
2 individual jurisdictional threshold and the five million dollar (\$5,000,000.00) aggregate
3 jurisdictional threshold for federal court diversity jurisdiction. Further, there is no federal
4 question at issue as the issues herein are based solely on the California Labor Code,
5 Industrial Welfare Commission Wage Orders, Code of Civil Procedure and Rules of Court.
6 Thus, the State of California, Los Angeles County Superior Court maintains the appropriate
7 jurisdiction to hear this matter.

8 **THE PARTIES**

9 14. During the statute of limitations period, Plaintiff was employed by
10 Defendants and assigned to work in the County of Riverside in the state of California.

11 15. Plaintiff is informed and believes, and thereon alleges, that Defendant
12 Residential, and at all times relevant hereto was, a company organized and existing under
13 the laws of the State of California and licensed to do business in the State of California
14 during a portion of or all of the Statute of Limitations period.

15 16. The true names and capacities of DOES 1 through 50, inclusive, are unknown
16 to Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names.
17 Plaintiff is informed and believes, and thereon alleges, that each defendant designated as a
18 DOE is in some manner highly responsible for the occurrences alleged herein, and that
19 Plaintiff and other aggrieved employees' injuries and damages, as alleged herein, were
20 proximately caused by the conduct of such DOE defendants. Plaintiff will seek leave of the
21 Court to amend this Complaint to allege the true names and capacities of such DOE
22 defendants when ascertained.

23 17. Plaintiff is informed and believes, and based thereon alleges, that each
24 Defendant acted in all respects pertinent to this action as the agent of the other Defendants,
25 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the
26 acts of each Defendant are legally attributable to the other Defendants. Furthermore,
27 Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the
28 other aggrieved employees.

1 18. Plaintiff is informed and believes, and based thereon alleges, that each
2 Defendant acted in all respects as the agent, servant, partner, joint venture, integrated
3 enterprise, employee, proxy. Managing agent, and/or principal of the co-Defendants, and in
4 performing the acts mentioned below was acting, at least in part, within the course and scope
5 of that authority as such agent, proxy, servant, partner, joint venture, employee, managing
6 agent, and/or principal with the permission and consent of the above co-Defendants.
7 Plaintiff also alleges that the acts of each Defendant are legally attributable to the other
8 Defendants.

9 19. Plaintiff is informed and believes, and based thereon alleges, that each of the
10 Defendants sued herein was, at all relevant times, the employer, owner, shareholder,
11 principal, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the
12 remaining Defendants, and was acting, at least in part, within the course and scope of such
13 employment and agency, with the express and implied permission, consent and knowledge,
14 approval and/or ratification of the other Defendants. The above co-Defendants, managing
15 agents, and supervisors, aided, abetted, condoned, permitted, approved, authorized, and/or
16 ratified the unlawful acts described herein.

17 20. As a direct and proximate result of the unlawful actions of Defendants,
18 Plaintiff and the other aggrieved employees have suffered and continue to suffer penalties in
19 amounts as yet unascertained but subject to proof at trial and within the jurisdiction of this
20 Court.

21 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

22 23. Pursuant to the California Private Attorneys General Act of 2004
23 (“PAGA”), California Labor Code §§ 2698-2699.5, Plaintiff brings this action on behalf of
24 herself and all other aggrieved employees, e.g., current and former non-exempt employees
25 of Defendants who are California citizens and performed work for Defendants in the State
26 of California at any time within the period beginning one (1) year prior to the filing of the
27 Complaint in this action, or as otherwise permitted under PAGA, and ending at the time
28 this action settles or proceeds to final judgment (“statute of limitations period”).

1 24. On February 5, 2024, Plaintiff gave written notice by certified mail pursuant
2 to California Labor Code § 2699.3, to the California Labor and Workforce Development
3 Agency (“LWDA”) and Defendants, of the specific provisions of the California Labor
4 Code and IWC Wage Order alleged to have been violated, including the facts and theories
5 to support the alleged violations. Plaintiff has not received any response from the LWDA.
6 As Plaintiff has waited more than sixty-five (65) days from postmark date of her written
7 notice before filing this action, Plaintiff has complied with all of the requirements set forth
8 in California Labor Code § 2699.3 to commence a representative action under PAGA.

9 **FACTUAL ALLEGATIONS**

10 **Failure to Provide Required Meal Periods**

11 **[Cal. Lab. Code §§ 226.7, 512, 558; § 11 of the Applicable IWC Wage Order]**

12 26. During the statute of limitations period, as part of Defendants’ illegal
13 policies and practices to minimize labor costs and maximize corporate profits, Defendants
14 have required, permitted or otherwise suffered Plaintiff and aggrieved employees to
15 perform work during their meal periods, to completely skip their meal periods, to take late
16 and short meal periods, and Defendants have otherwise failed to provide the required meal
17 periods to Plaintiff and aggrieved employees as required under California Labor Code §§
18 226.7, 512, 558 and § 11 of the applicable IWC Order.

19 27. Defendants have implemented several practices that have caused Plaintiff
20 and aggrieved employees to systematically miss and otherwise take non-compliant meal
21 periods. Defendants systematically understaff their call centers such that its non-exempt
22 employees are given so much work to complete and calls to answer that they regularly
23 miss or take non-compliant meal periods. As a direct consequence of this understaffing,
24 Plaintiff and aggrieved employees have so much work to complete with no support from
25 other employees that they are forced to skip their meal periods altogether, to take them
26 after working longer than five (5) hours, to perform work during their meal periods, or
27 return to work after taking less than a thirty (30) minute meal period.

28 28. There are also frequently occasions when Plaintiff and aggrieved employees

1 need to perform other duties immediately before and during the time during which they are
2 legally entitled to take a meal period. Pursuant to Defendants' policies, Plaintiff and
3 aggrieved employees cannot simply drop their job duties, such as not answering an
4 incoming call, to take a meal period. Consequently, Plaintiff and aggrieved employees
5 regularly miss meal periods, take late meal periods, return early from meal periods, and
6 even clock out for meal periods but continue working.

7 29. Despite the foregoing, Defendants have implemented a policy and practice
8 of actively discouraging the issuance of meal period premium payments, and in the
9 process, Defendants have also violated California Labor Code §§ 226.7, § 11 of the
10 applicable IWC Wage Order, and the California Unfair Competition Law, California
11 Business & Prof. Code §§ 17200 *et. seq.*, by failing to compensate Plaintiff and aggrieved
12 employees who were not authorized and permitted to take a complete, timely,
13 uninterrupted meal period, one additional hour of compensation at the proper regular rate
14 of pay for each workday that such a meal period was not authorized or permitted.

15 **Failure to Provide Required Rest Breaks**

16 **[Cal. Lab. Code §§ 226.7, 512; § 12 of the Applicable IWC Wage Order]**

17 30. During the statute of limitations period, as part of Defendants' illegal
18 policies and practices to minimize labor costs and maximize corporate profits, Defendants
19 have failed to authorize and permit Plaintiff and other aggrieved employees to take rest
20 breaks as required under California Labor Code §§ 226.7 and 512, and § 12 of the
21 applicable IWC Order.

22 31. The same common policies and practices that deprive Plaintiff and other
23 aggrieved employees from taking their meal periods, as alleged herein, similarly deprive
24 them of their ability to take their first and second and third rest breaks. As alleged herein,
25 Defendants understaff their call centers which creates so much work for Plaintiff and other
26 aggrieved employees that they are frequently unable to take rest breaks.

27 32. Defendants also violated California Labor Code § 226.7, § 12 of the
28 applicable IWC Order, and the California Unfair Competition Law, California Business &

1 Professions Code §§ 17200 *et. seq.*, by failing to pay Plaintiff and other aggrieved
2 employees who were not provided with a rest break, in accordance with the applicable
3 wage order, one additional hour of compensation at the proper regular rate of pay for each
4 workday that a rest break was not provided.

5 **Failure to Pay Overtime Wages**

6 **[Cal. Lab. Code §§ 510, 1194, 1198; § 3 of the Applicable IWC Wage Order]**

7 33. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable
8 IWC Order, Defendants are required to compensate Plaintiff and other aggrieved
9 employees for all overtime, which is calculated at one and one-half (1 ½) times the regular
10 rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours
11 per week, and for the first eight (8) hours on the seventh consecutive workday, with double
12 time for all hours worked in excess of twelve (12) hours in any workday and for all hours
13 worked in excess of eight (8) hours on the seventh consecutive day of work in any
14 workweek.

15 34. Plaintiff and other aggrieved employees are current and former non-exempt
16 employees entitled to the protections of California Labor Code §§ 510, 1194, and § 3 of
17 the applicable IWC Order. During the statute of limitations period, Defendants have failed
18 to compensate Plaintiff and other aggrieved employees for all overtime hours worked as
19 required under the foregoing provisions of the California Labor Code and IWC Wage
20 Order by, among other methods: failing to pay overtime at one and one-half (1 ½) or
21 double the regular rate of pay as provided by California Labor Code §§ 510, 1194 and § 3
22 of the applicable IWC Order, requiring, permitting or suffering Plaintiff and other
23 aggrieved employees to work off-the-clock, and to work through meal and rest breaks, but
24 not compensating them for this time, improperly calculating the regular rate of pay based
25 on shift differential and other remuneration, illegally rounding hours to the benefit of
26 Defendants, and other methods to be discovered.

27 35. In a short-sighted attempt to maximize profits, Defendants understaff the
28 call centers where clients call to request or inquire about services. Not only has this

1 practice resulted in widespread missed meal and rest breaks, but it has also caused Plaintiff
2 and other aggrieved employees to perform work while off-the-clock. Defendants have
3 actual or constructive knowledge of this off-the-clock work and subtly condones it.
4 Defendants know that Plaintiff and other aggrieved employees perform this work off-the-
5 clock work.

6 36. Defendants have knowingly and willfully refused to perform its obligations
7 to compensate Plaintiff and other aggrieved employees for all wages earned and all hours
8 worked in violation of California Labor Code §§ 510, 1194 and 1198 and § 3 of the
9 applicable IWC Order.

10 **Failure to Pay Minimum Wages**

11 **[Cal. Lab. Code §§ 1194, 1197; § 4 of the IWC Wage**
12 **Orders]**

13 37. Pursuant to California Labor Code §§ 1194, 1197, and § 4 of the applicable
14 IWC Wage Order, payment to an employee of less than the applicable minimum wage for
15 all hours worked in a payroll period is unlawful.

16 38. During the statute of limitations period, the hourly rates for Plaintiff and other
17 aggrieved employees were precisely at California minimum wage. Based on this common
18 practice, Defendant failed to pay Plaintiff and other aggrieved employees minimum wages
19 for all hours worked by requiring, permitting or suffering Plaintiff and other aggrieved
20 employees to work off the clock, such as requiring them to work through meal and rest
21 breaks but not compensating them for this time, unlawfully rounding the hours worked by
22 Plaintiff and the other aggrieved employees resulting in the underpayment of wages; failing
23 to include this time in all hours worked, and other methods to be discovered.

24 39. Defendants' conduct described herein violates California Labor Code §§
25 1194, 1197, and § 4 of the applicable IWC Wage Order. As a proximate result of the
26 aforementioned violations, Plaintiff and other aggrieved employees have been damaged in
27 an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200,
28 203, 226, 1194, 1197.1, and any other applicable law, Plaintiff and other aggrieved

employees are entitled to recover the unpaid balance of wages owed to them by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

Failure to Timely Pay Wages During Employment

[Cal. Lab. Code § 204]

40. Pursuant to California Labor Code § 204, for all labor performed between the 1st and 15th days of any calendar month, Defendants are required to pay their nonexempt employees between the 16th and 26th day of the month during which the labor was performed. California Labor Code § 204 also provides that for all labor performed between the 16th and 26th days of any calendar month, Defendants are required to pay their non-exempt employees between the 1st and 10th day of the following calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday of the next regular payroll period.

41. During the statute of limitations period, Defendants have knowingly and willfully failed to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next regular payroll period as required by California Labor Code § 204, including but not limited to, compensation for missed meal and rest breaks, proper overtime wages due to an unlawful calculation of the regular rate of pay, and for work performed off-the-clock.

Failure to Pay All Wages Due to Discharged and Quitting Employees

[Cal. Lab. Code §§ 201 - 203]

42. Pursuant to California Labor Code § 201, 202 and 203, Defendants are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

43. Furthermore, pursuant to California Labor Code § 202, Defendants are required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous

1 notice of his or her intention to quit, in which case the employee is entitled to his or her
2 wages at the time of quitting.

3 44. California Labor Code § 203 provides that if an employer willfully fails to
4 pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is
5 discharged or who quits, the employer is liable for waiting time penalties in the form of
6 continued compensation to the employee at the same rate for up to 30 workdays.

7 45. During the statute of limitations period, Defendants have willfully failed to
8 pay accrued wages and other compensation to Plaintiff and other aggrieved employees in
9 accordance with California Labor Code §§ 201 and 202. Defendants do not have a
10 sufficient policy to provide Plaintiff and other aggrieved employees with their final
11 paychecks within the timeframes required under California law. In addition, because
12 Defendants have failed and continue to fail to properly compensate Plaintiff and other
13 aggrieved employees for all hours worked when due, overtime wages, and compensation
14 for non-compliant meal and rest breaks, Defendants have also willfully failed and continue
15 to fail to pay accrued wages and other compensation to Plaintiff and other aggrieved
16 employees in accordance with California Labor Code §§ 201 and 202.

17 **Failure to Furnish Accurate Itemized Wage Statements**

18 **[Cal. Lab. Code §§ 226(a); 248.2, 248.6, and § 7 of the Applicable IWC Wage Order]**

19 46. During the statute of limitations period, Defendants have routinely failed to
20 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage
21 statements. Defendants' pay stubs violate California Labor Code § 226 on their face by,
22 among other things, failing to state the name and address of the legal entity that was
23 Plaintiff's and aggrieved employees' employers. Derivatively, Defendants were and are not
24 providing Plaintiff and other aggrieved employees with proper meal periods and rest breaks
25 but intentionally fails to include in their wage statements one (1) additional hour of
26 compensation at their regular rates of pay for each non-compliant meal periods or rest breaks,
27 applicable rate of pay for sick leave, the regular rate of pay for sick leave, and other
28 California Labor Code violations yet to be discovered.

1 47. In order to conceal its wage theft, Defendants knowingly and intentionally
2 failed to provide Plaintiff and other aggrieved employees with timely and accurate itemized
3 wage statements in accordance with California Labor Code § 226(a) and § 7 of the applicable
4 IWC Order.

5 48. Plaintiff and other aggrieved employees suffered injury as a result of
6 Defendants' failure to provide timely and accurate itemized wage statements prevented them
7 from discovering the scope and extent of Defendants' violations of California wage and hour
8 laws, prevented them from being able to determine the gross wages earned, the total hours
9 worked, all deductions made, the net wages earned, the legal name and address of the
10 employers, all applicable hourly rates in effect during each pay period and the corresponding
11 number of hours worked at each hourly rate, the accurate rate of pay, available supplemental
12 Covid-19 sick leave and amount taken, and other violations yet to be discovered.

13 **Failure to Maintain Required Records**

14 **[Cal. Lab. Code §§ 226(a), 248.2, 248.6, 1174(d); § 7 of the Applicable IWC Wage**
15 **Order]**

16 49. During the statute of limitations period, as part of Defendants' illegal
17 payroll policies and practices to deprive Plaintiff and other aggrieved employees of all
18 wages earned and due, Defendants knowingly and intentionally failed to maintain records
19 as required under California Labor Code §§ 226(a) and 1174(d) and § 7 of the applicable
20 IWC Order, including but not limited to the following records: total daily hours worked by
21 each employee; applicable rates of pay; all deductions; meal periods; time records showing
22 when each employee begins and ends each work period; and accurate itemized statements.
23 Defendants had knowledge that they were not providing their non-exempt employees with
24 proper meal and rest periods, but knowingly failed to include in the wage statements one
25 (1) extra hour of compensation for each missed meal and rest period. Defendants also
26 illegally and inaccurately recorded the time in which Plaintiff and other aggrieved
27 employees worked. Defendants have also failed to maintain accurate, itemized wage
28 statements, and other violations of the California Labor Code which have not been

1 discovered.

2 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of**
3 **Duties**

4 **[Cal. Lab. Code § 2802]**

5 50. California Labor Code § 2802(a) requires an employer to indemnify an
6 employee for all necessary expenditures or losses incurred by the employee in direct
7 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
8 the employer.

9 51. During the Statute of Limitations period, and in violation of California Labor
10 Code § 2802, Defendant failed to indemnify Plaintiff and other aggrieved employees for all
11 business expenses and/or losses incurred in direct consequence of the discharge of their duties,
12 including but not limited to, expenses for the use of the internet and the purchase of other items
13 such as headphones.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

16 **[Cal. Lab. Code § 2698 *et seq.*]**

17 (On Behalf of Plaintiff against Defendant)

18 52. Plaintiff incorporates herein by specific reference, as though fully set forth,
19 the allegations in paragraphs 1 through 51.

20 53. Plaintiff is an “aggrieved employee” within the meaning of California
21 Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of
22 herself and other current and former non-exempt employees of Defendants pursuant to the
23 procedures specified in Labor Code § 2699.3, because Plaintiff was employed by
24 Defendants and one or more of the alleged California Labor Code violations was
25 committed against Plaintiff during the statute of limitations period.

26 54. Plaintiff seeks to recover civil penalties through a representative action
27 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009)
28 46 Cal.4th 969. Thus, class certification is not required.

1 55. A plaintiff has standing to represent all aggrieved employees for all of her
2 asserted violations of the California Labor Code under PAGA. See *Huff v. Securitas*
3 *Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757 (“For PAGA standing a
4 plaintiff need only have been employed by the violator and affected by ‘one or more’ of
5 the alleged violations. (Sec. 2699, subds. (a), (c)). Here, Plaintiff was not provided with a
6 legally compliant wage statement pursuant to California Labor Code §226 since the legal
7 name and address of the employer was not provided on Defendants wage statements,
8 Plaintiff was not provided with nor was allowed to use their earned sick leave, in addition
9 to the meal and rest period and other California Labor Code violations as alleged herein.

10 56. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to
11 recover civil penalties from Defendants in a representative action for the violations set
12 forth above, including but not limited to violations of California Labor Code §§ 201, 202,
13 203, 226(a), 226.7, 248.2, 248.6, 510, 512, 1174(d), 1194, 1197, ad 1198.

14 57. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil
15 penalties for Defendants’ violations of California Labor Code provisions for which a civil
16 penalty is specifically provided, including but not limited to, the following:

- 17 a. Pursuant to California Labor Code § 210, for violations of California
18 Labor Code § 204, Defendants are subject to a civil penalty in the
19 amount of one hundred dollars (\$100) for the initial violation for
20 each failure to pay each employee, and two hundred dollars (\$200)
21 per employee for violations in subsequent pay periods.
- 22 b. Pursuant to California Labor Code § 226.3, for violations of
23 California Labor Code § 226(a), Defendants are subject to a civil
24 penalty in the amount of two hundred and fifty dollars (\$250) per
25 aggrieved employee for the initial pay period where a violation
26 occurs and one thousand dollars (\$1,000) per aggrieved employee
27 for violations in subsequent pay periods.
- 28 c. Pursuant to California Labor Code § 1174.5, for violations of

California Labor Code § 1174(d), Defendants are subject to a civil penalty of five hundred dollars (\$500).

- d. Pursuant to California Labor Code § 1197.1, an employers 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 as follows: 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; and for each subsequent violation of the same 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 was intentionally committed.

58. California Labor Code § 2699(f) provides that for all California Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

59. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for Defendants' violations of California Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 226.7, 1194, 1197, and 1198.

60. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays for relief against Defendants, as follows:

1. For civil penalties according to proof;
2. For reasonable attorneys' fees and costs pursuant to California Labor Code §

1 2699(g), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions
2 providing for attorneys' fees and costs; and

3 3. For such further relief that the Court may deem just and proper.

4 Dated: April 25, 2024

GUZMÁN & TOKAR LLP

6 By: 
7 Marcia Guzmán, Esq.
8 Victoria Tokar, Esq.

9 SALUSKY LAW GROUP
10 Anna R. Salusky, Esq.

11 *Attorneys for Plaintiff*
12 *and the Aggrieved Employees*

EXHIBIT B

EMPLOYMENT LAWYERS GROUP
KARL GERBER, SBN: 166003
ANN GULESER, SBN: 210790
13418 Ventura Boulevard
Sherman Oaks, California 91423
Telephone: 818 783 7300
Facsimile: 818 995 7159

Attorneys for Plaintiff
MICHAEL HOLMES

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

MICHAEL HOLMES,	)	CASE NO.: CVRI2401096
	)	
Plaintiff,	)	COMPLAINT FOR DAMAGES,
	)	DEMAND FOR JURY TRIAL ON ALL
vs.	)	CAUSES OF ACTION OTHER THAN
	)	THE 13 th AND 14 th FOR WHICH THE
ARS AMERICAN RESIDENTIAL	)	RELIEF IS EQUITABLE
SERVICES OF CALIFORNIA, INC.;	)	
AMERICAN RESIDENTIAL SERVICES	)	1. MINIMUM WAGE VIOLATIONS;
L.L.C.; RIGHTIME HOME SERVICES	)	2. OVERTIME VIOLATIONS;
INC.; AND DOES 1 through 100 inclusive	)	3. MEAL BREAK VIOLATIONS;
	)	4. REST BREAK VIOLATIONS;
Defendants.	)	5. VIOLATION OF THE INDUSTRIAL
	)	WELFARE COMMISSION ORDER
	)	NO. 16-2001;
	)	6. BREACH OF WRITTEN
	)	CONTRACT;
	)	7. CALIFORNIA LABOR CODE
	)	SECTION 226 PENALTIES;
	)	8. CALIFORNIA LABOR CODE
	)	SECTION 2802 VIOLATIONS;
	)	9. CALIFORNIA LABOR CODE
	)	SECTION 203 PENALTIES;
	)	10. VIOLATION OF LABOR CODE
	)	SECTIONS 1102.5 (b), (c);
	)	11. WRONGFUL TERMINATION IN
	)	VIOLATION OF PUBLIC POLICY;
	)	12. INTENTIONAL INFLICTION OF
	)	EMOTION DISTRESS;

1) 13. CALIFORNIA BUSINESS &
2) PROFESSIONS CODE VIOLATIONS;
3) 14. CALIFORNIA LABOR CODE
4) SECTION 2699, 2699.3 PAGA
5) PENALTIES.

6 Plaintiff, MICHAEL HOLMES complains and alleges as follows:

7 **GENERAL ALLEGATIONS**
8 **(AGAINST ALL NAMED DEFENDANTS)**

9 1. Plaintiff, MICHAEL HOLMES ("Plaintiff"), is a male resident of the County of
10 Riverside, State of California.

11 2. Plaintiff is informed and believes that at all times herein mentioned, Defendant, ARS
12 AMERICAN RESIDENTIAL SERVICES OF CALIFORNIA, INC. ("ARS INC") was a duly
13 licensed California corporation employing Plaintiff and more than 5 people at 3030 Myers
14 Street, Riverside, CA 92503.

15 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant, ARS
16 AMERICAN RESIDENTIAL SERVICES LLC ("ARS LLC") was a duly licensed limited
17 liability company employing Plaintiff and more than 5 people at 3030 Myers Street, Riverside,
18 CA 92503.

19 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant, ARS
20 RIGHTIME HOME SERVICES INC. ("RIGHTIME") was a duly licensed California
21 corporation using 3030 Myers Street, Riverside, CA 92503 as its principal place of business,
22 employing Plaintiff and more than 5 people there.

23 5. All three defendants were joint employers of Plaintiff.

24 6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
25 associate, of those defendants fictitiously sued as DOES 1 through 100 inclusive and so the
26 Plaintiff sues them by these fictitious names. The Plaintiff is informed and believes that each of
27 the DOE defendants reside in the State of California and are in some manner responsible for the
28 conduct alleged herein. Upon discovering the true names and capacities of these fictitiously

1 named Defendants, the Plaintiff will amend this complaint to show the true names and
2 capacities of these fictitiously named defendants.

3 7. Plaintiff worked for Defendant from on or about April 19, 2023 to on or about
4 November 16, 2023.

5 8. On or about April 19, 2023, when he was hired, Plaintiff, the Defendants' electrical
6 department manager Michael Romero, and the general manager of the branch, Carry signed a
7 written contract for commissions which stated that in addition to his hourly wages of \$20.00,
8 Plaintiff would be paid commissions for residential electrical service calls. If he sold parts at a
9 service call, he would get 3% commission. If he installed the item sold, he would get a 7%
10 commission of the sale. Within seven months, Plaintiff went to approximately 300-400 calls and
11 installed and sold parts but was paid no commissions on his sales.

12 9. Throughout his employment, Defendants did not provide Plaintiff any paycheck stubs
13 and an accounting of his sales and commissions. Plaintiff complained to his manager Michael
14 Romero frequently asking to see his sales figures to check on his commissions but no
15 information was given to him.

16 10. On or about November 15, 2023, Plaintiff told his manager Michael Romero that he was
17 not being paid for what he sold and installed. The money he was paid did not add up compared
18 to the commissions he earned by making sales and installations. Plaintiff asked to see the
19 paperwork on the sales and installations he made. Plaintiff also complained that the app he was
20 given to use by Defendants to record his hours worked always crashed and did not record his
21 hours accurately. Plaintiff was fired on November 16, 2023, for making said complaint.

22 11. On November 16, 2023, Defendants used a pretextual reason for terminating Plaintiff.
23 When Plaintiff did not want to drive to an optional electrical assignment because it would have
24 been unsafe and dangerous to perform electrical repairs in the rain, and because Defendant's
25 vehicle had very bad tires and bad breaks for driving in the rain, Defendant fired Plaintiff. The
26 assignment was optional and firing Plaintiff for refusing to perform unsafe repairs was
27 pretextual, in retaliation for Plaintiff's complaints of not being paid commissions, correct wages
28 for the time he worked, and safety complaints.

12. Throughout his employment, Defendants did not pay Plaintiff's overtime wages hours
for each day he worked overtime. The app Defendants had the employees use crashed

1 frequently and Defendants did not allow Plaintiff to submit their hours worked on paper. Then
2 the app crashed the hours paid were incorrect. Plaintiff worked between about 5-15 hours of
3 overtime a week for which he was not paid.

4 13. Throughout his employment, Defendants did not pay Plaintiff for overtime hours at the
5 correct rate because his commissions were not taken into account when calculating Plaintiff's
6 overtime rate.

7 14. Throughout his employment, Defendants did not authorize and permit and provide an
8 opportunity to Plaintiff to have timely meal breaks within the first five hours of his shift.
9 Plaintiff was instructed to complete his installations without taking a break. Throughout his
10 employment, Defendants did not authorize and permit and provide an opportunity to Plaintiff to
11 have any rest breaks. Plaintiff was instructed to complete his installations without taking a
12 break.

13 15. Throughout his employment, Defendants had Plaintiff buy parts for installations costing
14 at least \$200 but did not reimburse Plaintiff for this business expense.

15 16. Throughout his employment, Defendants made Plaintiff use his own tools at work but
16 did not pay Plaintiff twice the minimum wage as required by the Industrial Welfare
17 Commission Order Number 16-2001.

18 17. Unless otherwise alleged in this complaint, the Plaintiff is informed, and on the basis of
19 that information and belief alleges that at all times herein mentioned, each of the remaining
20 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
21 under the authority of their agency, employment, or representative capacity, with the consent of
22 her/his codefendants.

23 18. All of the foregoing and following actions taken towards the Plaintiff that are alleged in
24 this complaint were carried out by managerial employees and agents of each other acting in a
25 deliberate, cold, callous, malicious, oppressive, and intentional manner in order to injure and
26 damage the Plaintiff.

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1 **FIRST CAUSE OF ACTION**
2 **MINIMUM WAGE VIOLATIONS**
3 **(AGAINST DEFENDANTS ARS INC., ARS LLC, RIGHTIME, AND DOE**
4 **DEFENDANTS)**

5 19. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General
6 Allegations, and incorporates these paragraphs into this cause of action as if they were fully
7 alleged herein.

8 20. The Industrial Welfare Commission Order Number 16-2001, Section 8 (B) requires the
9 employer to pay Plaintiff twice minimum wage for every hour worked. Defendant also failed to
10 pay Plaintiff for each hour worked. Because he was not paid each hour worked, and he was not
11 paid twice the minimum wage, but was required to use his own tools to perform tasks,
12 Defendant engaged in minimum wage violations.

13 21. Plaintiff prays for relief under California Labor Code Sections 1194 and 1194.2
14 including liquidated damages to pay Plaintiff minimum wage for all hours on call and worked,
15 attorney fees, and costs. Plaintiffs also pray for California Labor Code Section 1197.1 civil
16 penalties of \$250.00 per pay period when was not paid minimum wage for each hour worked.

17 22. Plaintiff also prays for penalties under Wage Order 16 Section 18 of \$50 for the first
18 paycheck that failed to pay minimum wage, and \$100 for each subsequent paycheck.

19 **SECOND CAUSE OF ACTION**
20 **OVERTIME AND DOUBLE TIME VIOLATIONS**
21 **(AGAINST DEFENDANTS ARS INC., ARS LLC, RIGHTIME, AND DOE**
22 **DEFENDANTS)**

23 23. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General
24 Allegations, Paragraphs 19-22 of the First Cause of Action, and incorporates these paragraphs
25 into this cause of action as if they were fully alleged herein.

26 24. Defendants did not pay Plaintiff for overtime hours at the correct rate. When a non-
27 exempt hourly employee receives a commission, the hourly value of that commission is calculated by
28

1 dividing the bonus amount by the total non-overtime hours the employee worked and added to hourly
2 wages to calculate the regular rate of pay. Because Plaintiff's pay includes hourly wages and
3 commissions, Plaintiff's regular rate of pay should have included the commissions which in turn
4 would be multiplied with 1.5 to calculate overtime rate. Defendant did not include the
5 commissions in the calculation of Plaintiff's overtime rate. Plaintiff's overtime wages were paid
6 at the incorrect rate since the calculation of overtime wages should have included commissions
7 earned. In order to calculate the correct rate of overtime, the entire money Plaintiff earned and
8 was not paid should be factored into the calculation which could be different each pay period
9 depending on the commissions he earned.

10 25. Defendants did not pay Plaintiff's overtime wages hours for each day he worked
11 overtime. The app Defendants had the employees use crashed frequently and Defendants did not
12 allow Plaintiff to submit their hours worked on paper. Then the app crashed the hours paid were
13 incorrect. Plaintiff worked between about 5-15 hours of overtime a week for which he was not
14 paid.

15 26. Accordingly, California Labor Code Sections 510 and 1194 require Plaintiff to receive
16 the overtime and double wages for hours worked past eight or twelve at the correct rate of pay.

17 27. Plaintiffs pray for relief under California Labor Code Section 1194 including unpaid
18 overtime, double time, attorney fees, and costs.

19 **THIRD CAUSE OF ACTION**
20 **MEAL BREAK VIOLATIONS**
21 **(AGAINST DEFENDANTS ARS INC., ARS LLC, RIGHTIME, AND ALL DOE**
22 **DEFENDANTS)**

23 28. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General
24 Allegations, Paragraphs 19-22 of the First Cause of Action, Paragraphs 23-27 of the Second
25 Cause of Action, and incorporates these paragraphs into this cause of action as if they were fully
26 alleged herein.

27 29. Throughout his employment, Defendants did not authorize and permit and provide an
28 opportunity to Plaintiff to have timely meal periods within the first five hours of his shift.

1 Plaintiff was instructed to work and not take a lunch break because he had to drive to locations
2 and make sure he made it within the window he was expected to arrive. Defendants failed to
3 pay Plaintiff daily premiums for missed meal breaks.

4 30. California Labor Code Section 512 specifies when employees are to get meal breaks.
5 California Labor Code Section 226.7 sets forth the penalty scheme which the Murphy Court has
6 interpreted to be a wage. California Labor Code Section 516 further allows the Industrial
7 Welfare Commission to make orders about breaks and meal periods. The rate of pay for a
8 missed meal break is an hourly wage. The penalty for a missed meal break is an hourly wage as
9 a meal break premium. Plaintiff prays for missed meal break premiums for the meal breaks he
10 was not given the opportunity to take or take timely. Plaintiff prays that the hour of pay he
11 receives for missing meal breaks be at his correct hourly pay rate factoring in the commissions
and to be at least twice the minimum wage.

12 31. Under the California Labor Code Section 226.7, if an employer fails to provide an
13 employee a meal period in accordance with an applicable order of the Industrial Welfare
14 Commission, the employer shall pay the employee one additional hour of pay at the employee's
15 regular rate of compensation for each work day that the meal period is not provided and or not
16 able to be taken. The Industrial Welfare Commission Order applicable to Plaintiff is Order
Number 16-2001, Sections 10, and 18.

17 32. According to the Order Number 16-2001 Section 18, Plaintiff claims as follows: (1)
18 Initial Violation - \$50.00 for each underpaid employee for each pay period during which the
19 employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.
20 (2) Subsequent Violations - \$100.00 for each underpaid employee for each pay period during
21 which the employee was underpaid in addition to an amount which is sufficient to recover
22 unpaid wages. (3) The affected employee shall receive payment of all wages recovered.

23 33. Plaintiff claims for reasonable attorney fees for litigating this cause of action under
24 California Labor Code Section 218.5 and interest under Section 218.6.

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4 **FOURTH CAUSE OF ACTION**
5 **REST BREAK VIOLATIONS**
6 **(AGAINST DEFENDANTS ARS INC, ARS LLC, RIGHTIME, AND ALL DOE**
7 **DEFENDANTS)**

8 34. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General
9 Allegations, Paragraphs 19-22 of the First Cause of Action, Paragraphs 23-27 of the Second
10 Cause of Action, Paragraphs 28-33 of the Third Cause of Action, and incorporates these
11 paragraphs into this cause of action as if they were fully alleged herein.

12 35. Throughout his employment, Defendants did not authorize and permit and provide an
13 opportunity to Plaintiff to have rest breaks. Plaintiff was instructed to work and not take a break
14 because he had to drive to locations and make sure he made it within the window he was
15 expected to arrive. Defendants failed to pay Plaintiff daily premiums for missed rest breaks.

16 36. California Labor Code Section 512 specifies when employees are to get rest breaks.
17 California Labor Code Section 226.7 sets forth the penalty scheme which the Murphy Court has
18 interpreted to be a wage. California Labor Code Section 516 further allows the Industrial
19 Welfare Commission to make orders about breaks. The rate of pay for a missed break is an
20 hourly wage. Plaintiff prays for missed rest break premiums for the rest breaks he was not
21 permitted to take. Plaintiff prays that the hour of pay he receives for missing rest breaks be at
22 his correct hourly pay rate factoring in the commissions and to be at least twice the minimum
23 wage.

24 37. Under the California Labor Code Section 226.7, if an employer fails to provide an
25 employee a rest period in accordance with an applicable order of the Industrial Welfare
26 Commission, the employer shall pay the employee one additional hour of pay at the employee's
27 regular rate of compensation for each work day that the meal period is not provided and or not
28 able to be taken. The Industrial Welfare Commission Order applicable to Plaintiff is Order
Number 16-2001, Sections 11, and 18.

38. According to the Order Number 16-2001 Section 18, Plaintiff claims as follows: (1)
Initial Violation - \$50.00 for each underpaid employee for each pay period during which the

1 employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

2 (2) Subsequent Violations - \$100.00 for each underpaid employee for each pay period during
3 which the employee was underpaid in addition to an amount which is sufficient to recover
4 unpaid wages. (3) The affected employee shall receive payment of all wages recovered.

5 39. Plaintiff claims for reasonable attorney fees for litigating this cause of action under
6 California Labor Code Section 218.5 and interest under Section 218.6.

7
8 **FIFTH CAUSE OF ACTION**

9 **VIOLATION OF THE INDUSTRIAL WELFARE COMMISSION ORDER NO. 16-2001**
10 **(AGAINST DEFENDANTS ARS INC, ARS LLC, RIGHTIME, AND ALL DOE**
11 **DEFENDANTS)**

12 40. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General
13 Allegations, Paragraphs 19-22 of the First Cause of Action, Paragraphs 23-27 of the Second
14 Cause of Action, Paragraphs 28-33 of the Third Cause of Action, Paragraphs 34-39 of the
15 Fourth Cause of Action, and incorporates these paragraphs into this cause of action as if they
16 were fully alleged herein.

17 41. The Industrial Welfare Commission Order applicable to Plaintiff is Order Number 16-
18 2001. Wage order 16, Section 8 (B) states when the employer requires the use of tools or
19 equipment or they are necessary for the performance of a job, such tools and equipment shall be
20 provided and maintained by the employer, except that an employee whose wages are at least
21 two (2) times the minimum wage may provide and maintain hand tools and equipment
22 customarily required by the particular trade or craft in conformity with Labor Code Section
23 2802.

24 42. Throughout his employment, Defendants made Plaintiff use his own tools at work to
25 perform the necessary tasks, but did not pay Plaintiff twice the minimum wage as required by
26 the Industrial Welfare Commission Order Number 16-2001.

27 43. According to the Order Number 16-2001 Section 18, Plaintiff claims as follows: (1)
28 Initial Violation - \$50.00 for each underpaid employee for each pay period during which the
employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

1 (2) Subsequent Violations - \$100.00 for each underpaid employee for each pay period during
2 which the employee was underpaid in addition to an amount which is sufficient to recover
3 unpaid wages. (3) The affected employee shall receive payment of all wages recovered.

4
5 **SIXTH CAUSE OF ACTION**
6 **BREACH OF CONTRACT**
7 **(AGAINST DEFENDANTS ARS INC, ARS LLC, RIGHTIME, AND ALL DOE**
8 **DEFENDANTS)**

9 44. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General
10 Allegations, Paragraphs 19-22 of the First Cause of Action, Paragraphs 23-27 of the Second
11 Cause of Action, Paragraphs 28-33 of the Third Cause of Action, Paragraphs 34-39 of the
12 Fourth Cause of Action, Paragraphs 40-43 of the Fifth Cause of Action, and incorporates these
13 paragraphs into this cause of action as if they were fully alleged herein.

14 45. This claim is for breach of a written employment contract for commissions between
15 Plaintiff and Defendants ARS INC, ARS LLC, RIGHTIME. The written contract was signed by
16 Plaintiff and the electrical department manager Michael Romero, and the general manager of
17 the branch, Carry, on April 19, 2023 a copy of which is in Defendants' possession.

18 46. On or about April 19, 2023, in Riverside, California, Plaintiff and Defendants entered
19 into a written agreement for commissions, which stated that in addition to his hourly wages of
20 \$20.00, Plaintiff would be paid commissions for residential electrical service calls. Plaintiff was
21 promised if he sold parts at a service call, he would get 3% commission. If he installed the item
22 sold, he would get a 7% commission. Defendant has a copy of said contract. This commission
23 agreement reflected the same terms based on which Plaintiff was being paid commissions since
24 the beginning of his employment. Plaintiff was paid his commissions earned before April 19,
25 2023 except a few missing commissions.

26 47. Plaintiff was not paid any of his commissions earned. Within seven months of time
27 frame, Plaintiff went to approximately 300-400 calls and was paid no commissions on his sales
28 and installations.

1 48. At all times herein mentioned, Plaintiff duly performed all of the covenants, conditions,
2 and terms under the written contract. Plaintiff went on calls for electrical repairs and sold and
3 installed parts earning commissions.

4 49. Despite the fact that Plaintiff had fully performed the under the aforementioned written
5 contract, Defendants breached the contract by not paying Plaintiff his earned commissions from
6 on or about April 19, 2023, to his termination on November 16, 2023.

7 50. Plaintiff requested that Defendants pay his commissions but Defendants refused to make
8 any payments. Defendants were therefore in breach of the written contract and have not
9 remedied its breach to date. On or about November 16, 2023, Defendants wrongfully terminated
10 Plaintiff for asking to be paid his commissions but for a pretextual reason.

11 51. Plaintiff therefore prays for the commissions he earned on approximately 300-400
12 calls/assignments he performed wherein he installed and sold parts at each assignment. The
13 commission amount Plaintiff earned could be more than \$105,000 depending on whether there
14 was a sale (3%) or an installation (7%). The Precise amount of commissions will be ascertained
15 by the sales and installations Plaintiff performed which would be discovered during discovery.

16 52. Plaintiff further prays for statutory interest on the foregoing amounts pursuant to California
17 Civil Code §§ 3287(a) and (b) and/or California Labor Code § 218.6.

18 **SEVENTH CAUSE OF ACTION**
19 **CALIFORNIA LABOR CODE SECTION 226 PENALTIES**
20 **(AGAINST DEFENDANTS ARS INC, ARS LLC, RIGHTIME AND ALL DOE**
21 **DEFENDANTS)**

22 53. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General
23 Allegations, Paragraphs 19-22 of the First Cause of Action, Paragraphs 23-27 of the Second
24 Cause of Action, Paragraphs 28-33 of the Third Cause of Action, Paragraphs 34-39 of the
25 Fourth Cause of Action, Paragraphs 40-43 of the Fifth Cause of Action, Paragraphs 44-52 of the
26 Sixth Cause of Action, and incorporates these paragraphs into this cause of action as if they
27 were fully alleged herein.
28

1 54. Defendants violated California Labor Code Section 226 by failing to indicate the correct
2 amount of pay for the number of hours Plaintiff worked, and commissions he earned on each
3 paystub. The paystubs had erroneous hourly rates that did not account of the correct rate for
4 overtime pay and did not include pay for expenses, meal and rest break premiums. Because the
5 overtime wages Plaintiff earned did not include the commissions he earned, they were not the
6 correct rate of pay for overtime, double time, and minimum wages. The rates of pay were all
7 wrong. The paystubs failed to pay rest and meal break premiums for missed breaks and were
8 wrong in that respect. Defendants did not keep accurate time records for Plaintiff, and did not
9 pay Plaintiff for the accurate overtime hours he worked. Plaintiff was paid erroneous rates
10 of pay because he was not paid twice the minimum wage.

11 55. Plaintiff prays for statutory California Labor Code Section 226(e) damages of \$50.00 for
12 the first violation and \$100.00 for each subsequent violation.

13 56. Plaintiff prays for injunctive relief under California Labor Code Section 226(h) as well
14 as attorney fees and costs in doing so.

15 57. Plaintiff prays for attorney fees and costs under California Labor Code Section 218.5
16 and interest under 218.6.

17 **EIGHTH CAUSE OF ACTION**
18 **CALIFORNIA LABOR CODE SECTION 2802 VIOLATIONS**
19 **(AGAINST DEFENDANT PREMIER AND ALL DOE DEFENDANTS)**

20 58. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General
21 Allegations, Paragraphs 19-22 of the First Cause of Action, Paragraphs 23-27 of the Second
22 Cause of Action, Paragraphs 28-33 of the Third Cause of Action, Paragraphs 34-39 of the
23 Fourth Cause of Action, Paragraphs 40-43 of the Fifth Cause of Action, Paragraphs 44-52 of the
24 Sixth Cause of Action, Paragraphs 53-57 of the Seventh Cause of Action, and incorporates
25 those paragraphs as though fully stated in this cause of action.

26 59. Defendants violated the California Labor Code Section 2802 which requires an
27 employer to indemnify his employee for all necessary expenditures or losses incurred by the
28 employee in direct consequence of his obedience to the directions of the employer. All awards

1 made by a court or by the Division of Labor Standards Enforcement for reimbursement of
2 necessary expenditures under this section shall carry interest at the same rate as judgments in
3 civil actions. Interest shall accrue from the date on which the employee incurred the necessary
4 expenditure or loss. For purposes of this section, the term "necessary expenditures or losses"
5 shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the
6 employee enforcing the rights granted by this section.

7 60. As alleged in Paragraph 15, throughout his employment, Defendants had Plaintiff buy
8 parts for installations costing at least \$200 but did not reimburse Plaintiff for this business
9 expense. Defendant must also pay the value of rental on the tools Plaintiff used because they did
10 not pay him twice the minimum wage.

11 61. Plaintiff prays for reimbursement for purchases he made costing approximately \$200 for
12 the installations he performed for Defendants.

13 62. Plaintiff prays for attorney fees and costs under California Labor Code Section 2802c for
14 the purpose of enforcing his rights in this Claim under California Labor Code Section 2802.

15 **NINTH CAUSE OF ACTION**
16 **CALIFORNIA LABOR CODE SECTION 203 PENALTIES**
17 **(AGAINST DEFENDANTS ARS INC, ARS LLC, RIGHTIME AND ALL DOE**
18 **DEFENDANTS)**

19 63. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General
20 Allegations, Paragraphs 19-22 of the First Cause of Action, Paragraphs 23-27 of the Second
21 Cause of Action, Paragraphs 28-33 of the Third Cause of Action, Paragraphs 34-39 of the
22 Fourth Cause of Action, Paragraphs 40-43 of the Fifth Cause of Action, Paragraphs 44-52 of the
23 Sixth Cause of Action, Paragraphs 53-57 of the Seventh Cause of Action, Paragraphs 58-62 of
24 the Eighth Cause of Action, and incorporates these paragraphs into this cause of action as if
25 they were fully alleged herein.

26 64. Plaintiff was not paid all due wages when he was terminated on or about November 23,
27 2022. Plaintiff was owed overtime, and minimum wages at the right rate of pay, commissions,
28 and meal and rest break penalties as alleged in Paragraphs 8-16, the First through the Eighth

1 Causes of Action. Plaintiff prays for California Labor Code Section 203 penalties due to
2 violations of California Labor Code Section 201.

3 65. Plaintiff prays for California Labor Code Section 203 penalties as well as attorney fees
4 and costs under California Labor Code Section 218.5 and interest under California Labor Code
5 Section 218.6.

6
7 **TENTH CAUSE OF ACTION**
8 **VIOLATIONS OF LABOR CODE SECTIONS 1102.5 (b), (c)**
9 **(AGAINST DEFENDANTS ARS INC, ARS LLC, RIGHTIME AND ALL DOE**
10 **DEFENDANTS)**

11 66. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General
12 Allegations, Paragraphs 19-22 of the First Cause of Action, Paragraphs 23-27 of the Second
13 Cause of Action, Paragraphs 28-33 of the Third Cause of Action, Paragraphs 34-39 of the
14 Fourth Cause of Action, Paragraphs 40-43 of the Fifth Cause of Action, Paragraphs 44-52 of the
15 Sixth Cause of Action, Paragraphs 53-57 of the Seventh Cause of Action, Paragraphs 58-62 of
16 the Eighth Cause of Action, Paragraphs 63-65 of the Ninth Cause of Action, and incorporates
17 these paragraphs into this cause of action as if they were fully alleged herein.

18 67. This claim is under the Labor Code § 1102.5(b) which states that an employer, or any
19 person acting on behalf of the employer, shall not retaliate against an employee for disclosing
20 information, or because the employer believes that the employee disclosed or may disclose
21 information, to a government or law enforcement agency, to a person with authority over the
22 employee or another employee who has the authority to investigate, discover, or correct the
23 violation or noncompliance, or for providing information to, or testifying before, any public
24 body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to
25 believe that the information discloses a violation of state or federal statute, or a violation of or
26 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
27 the information is part of the employee's job duties. Plaintiff alleges that he was wrongfully
28 terminated in retaliation for complaining to Defendants that he was not being paid his earned

1 commissions, as alleged in Paragraphs 8-11, and Causes of Action One through Ten in violation
2 of California Labor Code § 1102.5(b).

3 68. This claim is under the Labor Code § 1102.5(c) which prohibits retaliation of an
4 employee who refuses to participate in an activity that would violate a statute. Plaintiff alleges
5 that he was wrongfully terminated in retaliation for complaining to Defendants that he was not
6 being paid his earned commissions, as alleged in Paragraphs 8-11, and Causes of Action One
7 through Ten in violation of California Labor Code § 1102.5(c). Not objecting to, or complaining
8 about Defendants' conduct would mean Plaintiff would engage in conduct that would violate
9 labor laws.

10 69. Plaintiff is informed, believes, and based thereon, alleges that Defendant constructively
11 wrongfully terminated his employment in violation of the Labor Code §§ 1102.5 (b), (c), in
12 retaliation for asking to be paid earned commission as alleged in Paragraphs 8-11 and Causes of
13 Action One through Ten in violation of California Labor Code § 1102.5, which violates the
14 following public policies:

- 15 a. California Labor Code § 200(a), which defines wages to include all amounts for
16 labor performed by employees of every description, whether the amount is fixed
17 or ascertained by the standard of time, task, piece, commission basis, or other
18 method of calculation;
- 19 b. California Labor Code § 216, which makes it a misdemeanor for any person, agent,
20 manager, or officer of an employer who, having the ability to pay, willfully refuses
21 to pay wages due and payable after a demand has been made by an employee for
22 said wages;
- 23 c. California Labor Code §§ 222-224 and California Code of Civil Procedure §
24 487.020, pertaining to the prompt payment of an employee's wages;
- 25 d. *Phillips v. Gemini Moving Specialists* (1998) 63 Cal.App.4th 563, 570, *Gould v.*
26 *Maryland Sound Industries* (1995) 31 Cal.App.4th 1147, and *Gantt v. Sentry Ins.*
27 (1992) 1 Cal.App.4th 1083, 1095, cases in which California courts have long
28 recognized that wage and hour laws concern the health and safety of workers and
the general public health and general welfare of society;

- 1 e. *Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, citing to *Foley v. Interactive*
2 *Data Corp.* (1988) 47 Cal.3d 654, finding that the discharge of an employee
3 unfairly, even on an “at will” basis, with the intent to frustrate the benefits of
4 employment gives rise to a breach of the covenant of good faith and fair dealing;
- 5 f. Labor Code § 226(a), which requires an employer to issue its employees
6 itemized paystubs stating the correct rates of pay and all gross and net wages
7 earned;
- 8 g. California Labor Code § 558 which states any employer or other person acting
9 on behalf of an employer who violates, or causes to be violated, a section of the
10 chapter of which Section 510 is a part shall be liable for an initial violation of
11 \$50 and \$100 for each subsequent violation per pay period. Section 558 applies
12 for violations of Sections 203, 226, and 1194;
- 13 h. California Labor Code Sections 6300, 6306, 6311, for forcing Plaintiff to work
14 in unsafe and unhealthy conditions and terminating Plaintiff when he complained
15 of the unsafe conditions. California Labor Code Sections 6300, 6306, 6311 state
16 that no employee shall be laid off or discharged for refusing to perform work in
17 the performance of which this code, including Section 6400, any occupational
18 safety or health standard or any safety order of the division or standards board
19 will be violated, where the violation would create a real and apparent hazard to
20 the employee or his or her fellow employees. Any employee who is laid off or
21 discharged in violation of this section or is otherwise not paid because she
22 refused to perform work in the performance of which this code, any occupational
23 safety or health standard or any safety order of the division or standards board
24 will be violated and where the violation would create a real and apparent hazard
25 to the employee or her fellow employees shall have a right of action for wages
26 for the time the employee is without work as a result of the layoff or discharge;
- 27 i. California Labor Code Section 6400(a), which states that every employer shall
28 furnish employment and a place of employment that is safe and healthful for the
employees therein for forcing Plaintiff to work in unsafe and unhealthy

1 conditions and terminating Plaintiff when he complained of the unsafe
2 conditions;

3 j. California Labor Code Section 6402 which states that no employer shall require,
4 or permit any employee to go or be in any employment or place of employment
5 which is not safe and healthful for forcing Plaintiff to work in unsafe and
6 unhealthy conditions and terminating Plaintiff when he complained of the unsafe
7 conditions;

8 k. California Labor Code Section 6403 for forcing Plaintiff to work in unsafe and
9 unhealthy conditions and terminating Plaintiff when he complained of the unsafe
10 conditions. California Labor Code Section 6403 states that no employer shall fail
11 or neglect to do any of the following:

12 (a) To provide and use safety devices and safeguards reasonably adequate to
13 render the employment and place of employment safe.

14 (b) To adopt and use methods and processes reasonably adequate to render the
15 employment and place of employment safe.

16 (c) To do every other thing reasonably necessary to protect the life, safety, and
17 health of employees.

18 l. California Labor Code Section 6404 which states that no employer shall occupy
19 or maintain any place of employment that is not safe and healthful for forcing
20 Plaintiff to work in unsafe and unhealthy conditions and terminating Plaintiff
21 when he complained of the unsafe conditions;

22 m. California Vehicle Code § 26453 which states all brakes and component parts
23 thereof shall be maintained in good condition and in good working order.

24 The brakes shall be so adjusted as to operate as equally as practicable with
25 respect to the wheels on opposite sides of the vehicle;

26 n. California Vehicle Code 27465(b) that makes it a traffic offense for someone to
27 drive a motor vehicle with tires that have overly worn tire treads;

28 o. California Labor Code § 1102.5(b) which states that an employer shall not
retaliate against an employee for disclosing information, or because the employer

believes that the employee disclosed or may disclose information, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties;

- p. California Labor Code § 1102.5(c) which prohibits retaliation of an employee who refuses to participate in an activity that would violate a statute;
- q. California Business and Professions Code § 17200, which was being violated as Defendant engaged in practices of getting employees such as Plaintiff to work without salary, work expenses of rent, and earned commissions;
- r. All other state and federal statutes, regulations, administrative orders, and ordinances which effect society at large, and which discovery will reveal were violated by all named and DOE Defendants by retaliating against Plaintiff and wrongfully terminating Plaintiff.

70. Defendant's actions, alleged in this claim, directly and proximately resulted in Plaintiff suffering and continuing to suffer, extreme and severe anguish, humiliation, embarrassment, emotional distress, mental suffering, nervousness, tension, anxiety, and depression, and causing Plaintiff to incur future medical bills, all to Plaintiff's detriment in a sum within the jurisdiction of this court, to be ascertained according to proof.

71. As a direct, foreseeable, and proximate result of the conduct of Defendant, named in this claim, Plaintiff has suffered, and continues to suffer emotional distress, substantial losses in salary, bonuses, job benefits, and other employment benefits which he would have received from said Defendant, plus expenses incurred in obtaining substitute employment and not being regularly employed for months, being without a source of income and benefits all to Plaintiff's damage in a sum within the jurisdiction of this court, to be ascertained according to proof. Plaintiff also prays for all equitable relief awardable pursuant to *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203.

1 72. The grossly reckless, and/or intentional, malicious, and bad faith manner in which said
2 Defendant engaged in those acts as described in this claim by willfully violating the statutes
3 enumerated in this claim and retaliating against Plaintiff by terminating Plaintiff in violation of
4 the law, Plaintiff is entitled to punitive damages against said Defendant in an amount within the
5 jurisdiction of this court, to be ascertained by the fact finder, that is sufficiently high to punish
6 said Defendant, deter them from engaging in such conduct again, and to make an example of
7 them to others.

8 73. Plaintiff is informed, believes, and based thereon, alleges that the outrageous conduct of
9 said Defendant described above were done with oppression and malice by Plaintiff's supervisor
10 and managers and done with a conscious disregard for Plaintiff's rights and with the intent,
11 design and purpose of injuring Plaintiff. These unlawful acts were ratified by those other
12 individuals who were managing agents of said Defendant employers. By reason thereof,
13 Plaintiff is entitled to punitive or exemplary damages against said Defendant, for their acts as
14 described in this claim in a sum to be determined at the time of trial.

15 74. Plaintiff prays for the \$10,000 civil penalty that Labor Code Section 1102.5(e) imposes,
16 as well as all other remedies available under Labor Code Section 1102.5 against each
17 Defendant.

18 75. Plaintiff prays for attorney fees for pursuing this cause of action per Labor Code
19 §1102.5(j).

20 **ELEVENTH CAUSE OF ACTION**
21 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
22 **(AGAINST DEFENDANTS ARS INC, ARS LLC, RIGHTIME, AND ALL DOE**
23 **DEFENDANTS)**

24 76. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General
25 Allegations, Paragraphs 19-22 of the First Cause of Action, Paragraphs 23-27 of the Second
26 Cause of Action, Paragraphs 28-33 of the Third Cause of Action, Paragraphs 34-39 of the
27 Fourth Cause of Action, Paragraphs 40-43 of the Fifth Cause of Action, Paragraphs 44-52 of the
28 Sixth Cause of Action, Paragraphs 53-57 of the Seventh Cause of Action, Paragraphs 58-62 of

1 the Eighth Cause of Action, Paragraphs 63-65 of the Ninth Cause of Action, Paragraphs 66-75
2 of the Tenth Cause of Action, and incorporates these paragraphs into this cause of action as if
3 they were fully alleged herein.

4 77. Under California law, no employee, whether they are an at-will employee, or an
5 employee under a written or other employment contract, can be terminated for a reason that is in
6 violation of a fundamental public policy. The California Court has interpreted a fundamental
7 public policy to be any articulable constitutional, statutory, or regulatory provision that is
8 concerned with a matter effecting society at large rather than a purely personal or proprietary
9 interest of the employee or the employer. Moreover, the public policy must be fundamental,
substantial, and well established at the time of discharge.

10 78. Plaintiff is informed, believes, and based thereon, alleges Defendant terminated Plaintiff
11 in violation of public policy in retaliation for complaining to Defendants that he was not being
12 paid his earned commissions, as alleged in Paragraphs 8-11, and Causes of Action One through
13 Eleven. The conduct described in the above sentence violates the following statutes that affect
14 society at large:

- 15 a. California Labor Code § 200(a), which defines wages to include all amounts for
16 labor performed by employees of every description, whether the amount is fixed
17 or ascertained by the standard of time, task, piece, commission basis, or other
18 method of calculation;
- 19 b. California Labor Code § 216, which makes it a misdemeanor for any person, agent,
20 manager, or officer of an employer who, having the ability to pay, willfully refuses
21 to pay wages due and payable after a demand has been made by an employee for
said wages;
- 22 c. California Labor Code §§ 222-224 and California Code of Civil Procedure §
23 487.020, pertaining to the prompt payment of an employee's wages;
- 24 d. *Phillips v. Gemini Moving Specialists* (1998) 63 Cal.App.4th 563, 570, *Gould v.*
25 *Maryland Sound Industries* (1995) 31 Cal.App.4th 1147, and *Gantt v. Sentry Ins.*
26 (1992) 1 Cal.App.4th 1083, 1095, cases in which California courts have long
27 recognized that wage and hour laws concern the health and safety of workers and
28 the general public health and general welfare of society;

- 1 e. *Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, citing to *Foley v. Interactive*
2 *Data Corp.* (1988) 47 Cal.3d 654, finding that the discharge of an employee
3 unfairly, even on an “at will” basis, with the intent to frustrate the benefits of
4 employment gives rise to a breach of the covenant of good faith and fair dealing;
- 5 f. Labor Code § 226(a), which requires an employer to issue its employees
6 itemized paystubs stating the correct rates of pay and all gross and net wages
7 earned;
- 8 g. California Labor Code § 558 which states any employer or other person acting
9 on behalf of an employer who violates, or causes to be violated, a section of the
10 chapter of which Section 510 is a part shall be liable for an initial violation of
11 \$50 and \$100 for each subsequent violation per pay period. Section 558 applies
12 for violations of Sections 203, 226, and 1194;
- 13 h. California Labor Code Sections 6300, 6306, 6311, for forcing Plaintiff to work
14 in unsafe and unhealthy conditions and terminating Plaintiff when he complained
15 of the unsafe conditions. California Labor Code Sections 6300, 6306, 6311 state
16 that no employee shall be laid off or discharged for refusing to perform work in
17 the performance of which this code, including Section 6400, any occupational
18 safety or health standard or any safety order of the division or standards board
19 will be violated, where the violation would create a real and apparent hazard to
20 the employee or his or her fellow employees. Any employee who is laid off or
21 discharged in violation of this section or is otherwise not paid because she
22 refused to perform work in the performance of which this code, any occupational
23 safety or health standard or any safety order of the division or standards board
24 will be violated and where the violation would create a real and apparent hazard
25 to the employee or her fellow employees shall have a right of action for wages
26 for the time the employee is without work as a result of the layoff or discharge;
- 27 i. California Labor Code Section 6400(a), which states that every employer shall
28 furnish employment and a place of employment that is safe and healthful for the
employees therein for forcing Plaintiff to work in unsafe and unhealthy

1 conditions and terminating Plaintiff when he complained of the unsafe
2 conditions;

3 j. California Labor Code Section 6402 which states that no employer shall require,
4 or permit any employee to go or be in any employment or place of employment
5 which is not safe and healthful for forcing Plaintiff to work in unsafe and
6 unhealthy conditions and terminating Plaintiff when he complained of the unsafe
7 conditions;

8 k. California Labor Code Section 6403 for forcing Plaintiff to work in unsafe and
9 unhealthy conditions and terminating Plaintiff when he complained of the unsafe
10 conditions. California Labor Code Section 6403 states that no employer shall fail
11 or neglect to do any of the following:

12 (d) To provide and use safety devices and safeguards reasonably adequate to
13 render the employment and place of employment safe.

14 (e) To adopt and use methods and processes reasonably adequate to render the
15 employment and place of employment safe.

16 (f) To do every other thing reasonably necessary to protect the life, safety, and
17 health of employees.

18 l. California Labor Code Section 6404 which states that no employer shall occupy
19 or maintain any place of employment that is not safe and healthful for forcing
20 Plaintiff to work in unsafe and unhealthy conditions and terminating Plaintiff
21 when he complained of the unsafe conditions;

22 m. California Vehicle Code § 26453 which states all brakes and component parts
23 thereof shall be maintained in good condition and in good working order.

24 The brakes shall be so adjusted as to operate as equally as practicable with
25 respect to the wheels on opposite sides of the vehicle;

26 n. California Vehicle Code 27465(b) that makes it a traffic offense for someone to
27 drive a motor vehicle with tires that have overly worn tire treads;

28 o. California Labor Code § 1102.5(b) which states that an employer shall not
retaliate against an employee for disclosing information, or because the employer

believes that the employee disclosed or may disclose information, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties;

- p. California Labor Code § 1102.5(c) which prohibits retaliation of an employee who refuses to participate in an activity that would violate a statute;
- q. California Business and Professions Code § 17200, which was being violated as Defendant engaged in practices of getting employees such as Plaintiff to work without salary, work expenses of rent, and earned commissions;
- r. All other state and federal statutes, regulations, administrative orders, and ordinances which effect society at large, and which discovery will reveal were violated by all named and DOE Defendants by retaliating against Plaintiff and wrongfully terminating Plaintiff.

79. Plaintiff alleges that Defendant violated articulable public policies, affecting society at large, by violating the statutes described in the above Paragraph when Defendant terminated Plaintiff in violation of public policy by terminating the Plaintiff in violation of the statutes described in the above paragraph. Specifically, the Plaintiff alleges that said Defendant's violations of the above referred statutes affect society at large by:

- a. Violating public policies regarding paying employees' commissions;
- b. Violating public policy regarding employees being able to make internal complaints about matters of public policy.

80. As a direct, foreseeable, and proximate result of the actions of said Defendant, the Plaintiff has suffered, and continues to suffer, severe emotional distress, substantial losses in salary, bonuses, job benefits, and other employment benefits Plaintiff would have received from said Defendant plus expenses incurred in obtaining substitute employment and not being regularly employed for months, as well as financial losses, all to the Plaintiff's damage, in a sum within the jurisdiction of this court, to be ascertained according to proof.

1 81. The malicious, oppressive, fraudulent, and bad faith manner in which said Defendant
2 conducted themselves as described in this cause of action by willfully violating those statutes
3 enumerated in this cause of action, Plaintiff prays for punitive damages against said Defendant
4 in an amount within the jurisdiction of this court, to be ascertained by the fact finder, that is
5 sufficiently high to punish said Defendant, deter them from engaging in such conduct again, and
6 to make an example of them to others.

7 82. The Plaintiffs are informed, believes, and based thereon, alleges that the outrageous
8 conduct of said Defendant described above, in this cause of action, was done with oppression,
9 fraud, and malice, by the Plaintiff's supervisor and manager and was ratified by those other
10 individuals who were managing agents of the Defendant employers. These unlawful acts were
11 further ratified by the named Defendant and all DOE Defendants, and done with a conscious
12 disregard for the Plaintiff's rights and with the intent, design and purpose of injuring the
13 Plaintiff. By reason thereof, the Plaintiffs are entitled to punitive or exemplary damages against
14 said Defendants, and each of them, for their acts as described in this cause of action in a sum to
15 be determined at the time of trial.

16 **TWELFTH CAUSE OF ACTION**
17 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
18 **(AGAINST DEFENDANTS ARS INC, ARS LLC, RIGHTIME AND ALL DOE**
19 **DEFENDANTS)**

20 83. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General
21 Allegations, Paragraphs 66-75 of the Tenth Cause of Action, Paragraphs 76-82 of the Eleventh
22 Cause of Action, and incorporates these paragraphs into this cause of action as if they were fully
23 alleged herein.

24 84. The corporate Defendants acted intentionally and/or recklessly and subjected the
25 Plaintiff to severe emotional distress by doing the outrageous acts alleged to have been done by
26 said Defendants, to the Plaintiff as follows: retaliating against Plaintiff for exercising his
27 statutory rights of getting paid the accurate amount of wages, overtime and commissions he
28

1 earned as the wrongful termination and California Labor Code Section 1102.5 causes of action
2 specify by terminating him for making a complaint that he was not being paid commissions.

3 85. In doing the acts alleged in the Tenth and the Eleventh Causes of Action Defendants
4 acted outrageously with the intent of causing (or with reckless disregard of the probability of
5 causing) severe emotional distress to the Plaintiff including retaliating against the Plaintiff and
6 terminating Plaintiff for making a complaint seeking his earned commissions.

7 86. Defendants' actions as alleged in this cause of action, directly and proximately resulted
8 in the Plaintiff suffering and continuing to suffer, extreme and severe anguish, humiliation,
9 embarrassment, emotional distress, mental suffering, nervousness, tension, anxiety, and
10 depression, and causing the Plaintiff to incur future medical bills, all to the Plaintiff's detriment
11 in a sum within the jurisdiction of this court, to be ascertained according to proof.

12 87. As a direct, foreseeable, and proximate result of Defendants' actions, and each of their
13 actions alleged in this cause of action, the Plaintiff has suffered, and continues to suffer,
14 substantial losses in job opportunities, career losses, salary, bonuses, job benefits, and other
15 employment benefits he would have received had said Defendants' actions not caused Plaintiff
16 such emotional suffering and grief, all to the Plaintiff's damage, in a sum within the jurisdiction
17 of this court, to be ascertained according to proof.

18 88. As a direct, foreseeable, and proximate result of the Defendants' actions, as alleged in
19 this cause of action, which were intentional, malicious, fraudulent, oppressive, and made in a
20 bad faith manner in an attempt to vex, injure, annoy, and/or willfully and consciously disregard
21 the Plaintiff's rights by taking the actions alleged in this cause of action, the Plaintiff prays for
22 punitive damages against said Defendants in a sum within the jurisdiction of this court, to be
23 ascertained, according to proof, in a sufficiently large amount to punish said Defendant, deter
24 future conduct by said Defendants and others behaving like them, and to make an example of
25 said Defendants.

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THIRTEENTH CAUSE OF ACTION
CALIFORNIA BUSINESS & PROFESSIONS CODE VIOLATIONS
(AGAINST DEFENDANTS ARS INC, ARS LLC, RIGHTIME AND ALL DOE
DEFENDANTS)

89. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General Allegations, Paragraphs 19-22 of the First Cause of Action, Paragraphs 23-27 of the Second Cause of Action, Paragraphs 28-33 of the Third Cause of Action, Paragraphs 34-39 of the Fourth Cause of Action, Paragraphs 40-43 of the Fifth Cause of Action, and incorporates those paragraphs as though fully stated in this cause of action.

90. Defendants violated California Business and Professions Code Section 17200 by violating the laws and statutes alleged in all claims other than common counts. These statutes are required of California employers. By violating these statutes Defendant saved millions of dollars a year in labor costs while violating the California Labor laws pled in this lawsuit. These practices allowed Defendants to underbid and undercut competitors. They were able to promise services they could not render, without these labor law violations, compared to their competitors who complied with California Labor laws by providing the correct rate of pay for overtime, double time wages opposed to Defendants not paying employees the monies earned at the correct rate of pay. It was also unfair, deceptive, and fraudulent not to pay Plaintiff for the commissions he earned, and the correct rate of pay for all hours worked, and to fail to pay Plaintiff overtime and double time rates due under California law, minimum wage, and to require Plaintiff to miss meal and rest breaks or take them late.

91. Plaintiff prays that California Business and Professions Code Section 17202 be utilized to enforce the labor laws specified in all causes of action and require Defendant to pay Plaintiff for all unpaid wages due.

92. Plaintiff further prays that California Business and Professions Code Section 17203 be utilized to enjoin Defendants from further engaging in the unlawful and unfair business practices specified in this Claim.

93. Under this Claim, Plaintiff also pray that equitable relief be given including disgorgement of Defendants' profits, the payment to Plaintiff of all money earned by

1 Defendants while violating the California Labor Code Sections specified in this lawsuit,
2 restitutionary relief and all remedies under this Claim going back four years from the filing of
3 this lawsuit. Plaintiff further prays for equitable relief in Defendant being responsible for a
4 judgment that pays Plaintiff for unpaid wages based upon Plaintiff's actual agreed hourly wages
5 opposed to minimum wage and then overtime and double time based upon minimum wage as
6 well as hours of pay for each missed meal break.

7
8 **FOURTEENTH CAUSE OF ACTION**
9 **CALIFORNIA LABOR CODE SECTION 2699, 2699.3 PAGA PENALTIES**
10 **(AGAINST DEFENDANTS ARS INC, ARS LLC, RIGHTIME AND ALL DOE**
11 **DEFENDANTS)**

12 94. Plaintiff realleges the information set forth in Paragraphs 1-18 of the General
13 Allegations, Paragraphs 19-22 of the First Cause of Action, Paragraphs 23-27 of the Second
14 Cause of Action, Paragraphs 28-33 of the Third Cause of Action, Paragraphs 34-39 of the
15 Fourth Cause of Action, Paragraphs 40-43 of the Fifth Cause of Action, and incorporates those
16 paragraphs as though fully stated in this cause of action.

17 95. On December 8, 2023, Plaintiff complied with California Labor Code Section 2699.3 by
18 exhausting administrative remedies under California Labor Code Section 2699, et. seq. by
19 causing Exhibit 1 to this complaint to be filed with the Labor Workforce Development
20 Agency/Department of Industrial Relations. The last page of Exhibit 1 is confirmation from the
21 Labor Workforce Development Agency they received Exhibit 1. Exhibit 2 demonstrates
22 Plaintiff sent, via certified mail, a copy of the Exhibit 1 filing to the designated agent(s) for
23 service of process of all named Defendants. In addition, Plaintiff paid said agency the \$75.00
24 filing fee for filing a PAGA action. More than the sixty-five days passed after the sending of
25 Exhibit 1 before this First Amended Complaint was filed. The Labor & Workforce
26 Development Agency did not indicate an intention to investigate, and Plaintiffs allege the
27 corporate Defendant did not cure the violations specified in Exhibit 1. Under California Labor
28 Code Section 2699.3C Plaintiffs exercise their statutory right to include this Cause of Action
arising under California Labor Code Section 2699, 65 days after the Labor & Workforce

1 Development Agency ceased to indicate an intention to investigate and the Defendant failed to
2 indicate they cured their practices.

3 96. The PAGA group are ARS AMERICAN RESIDENTIAL SERVICES OF
4 CALIFORNIA, INC., AMERICAN RESIDENTIAL SERVICES L.L.C., and RIGHTIME
5 HOME SERVICES' nonexempt employees in California who were employed to provide
6 electrical services including repairs, installations, and equipment sales in California going back
7 one year from the filing of these charges and are estimated to be approximately 20 employees.

8 97. The specific PAGA penalties at issue for the PAGA group are: California Labor Code
9 Sections 226.3, 226.4, and 226.6 are violated for the reasons specified in the attached complaint
10 which can be summarized as follows: 1) The pay stubs do not specify the correct overtime rates
11 worked; 2) the pay stubs do not have the correct rates for regular, overtime, and double time
12 hours and in turn do not reflect the correct pay rates, and deductions; 3) Because the employer
13 failed to properly provide employee wage deduction statements for each pay period during the
14 statutory time, a total of \$600 is due per pay period per employee. 4) Meal break and rest break
15 penalties do not appear and the general number of regular, and overtime hours worked are
16 incorrect; overtime was not paid for the first eight hours worked on the seventh consecutive day
17 of work in any one workweek; incorrect hourly wages were reflected in the pay stub making
18 the deductions incorrect. The employer did not provide paystubs. At times, the PAGA group
19 was asked to review 8 or 12 weeks of paystubs but they were not given copies. Paystubs were
20 not given every pay period and commission pay was not reflected on the paystubs.

21 98. Underpayments exist due to commissions not factored into the regular rate of pay. The
22 hourly rate to employees did not include the commissions therefore, overtime wages were not
23 covered by the amount paid. Overtime wages were not paid after 8 hours of work daily.
24 Employees who were using their own tools were not paid an hourly rate of twice the minimum
25 wage. Employees were not paid all wages due for commissions, regular hours, overtime hours,
26 and double time.

27 99. In addition to the California Labor Code Section 226 violations, California Labor Code
28 Section 201, 202, 203, 510, 516, 1194, 1199 violations led to the violations of California Labor
Code Section 558, 558.1 due to failures to pay overtime, and violations of California Labor
Code Sections 204(9), 210, 215, and 216. California Labor Code Sections 204, 210, 215, and

1 216 allow for PAGA penalties and were violated because not all wages earned and due twice
2 during each calendar month were paid, as required by these statutes which allow for additional
3 financial penalties and make the non paying employer guilty of a misdemeanor.

4 100. The above 10 PAGA violations per pay period are worth \$1,400.00 in PAGA penalties
5 per employee, per pay period. These violations go back a year before this charge was filed.

6 101. Plaintiff and the group of PAGA claimants make claims for California Labor Code
7 Section 2699(f) and (g) remedies for any violation and/or remedy under California Labor Code
8 2699 on behalf of similarly aggrieved employees as well as themselves.

9 102. Plaintiff prays for attorney fees under California Labor Code Section 2699(g) which
10 provide for attorney fees and costs.

11 WHEREFORE, the Plaintiff prays for the following relief, to be determined by a jury
12 except for Causes of Action Fifteen and Sixteen as follows:

13 For all Causes of Action Plaintiff prays for:

- 14 1. For all costs and disbursements incurred in this suit;
- 15 2. For such other and further relief as the Court deems just and proper;
- 16 3. For interest, including prejudgment interest, on all causes of action other than the
17 Fifth, and statutory interest where allowed, based upon the claim pled;

18 For the First Cause of Action:

- 19 4. For all unpaid minimum wages due as well as liquidated damages under
20 California Labor Code Section 1194.2 and 1197.1 and California Labor Code
21 Section 558 penalties;
- 22 5. Attorney fees and costs under California Labor Code Section 1194;

23 For the Second Cause of Action:

- 24 6. All overtime and double time compensation due under California Labor Code
25 Section 1194 as well as all overtime and double time compensation provided by
26 California Labor Code Section 510;
- 27 7. Attorney fees and costs under California Labor Code Section 1194;

1 For the Third Cause of Action:

- 2 8. For one hour of pay for all missed meal breaks under California Labor Code
3 Section 226.7;
4 9. For reasonable attorney fees under California Labor Code Section 218.5;

5 For the Fourth Cause of Action:

- 6 10. For one hour of pay for all missed rest breaks under California Labor Code
7 Section 226.7;
8 11. For reasonable attorney fees under California Labor Code Section 218.5;

9 For the Fifth Cause of Action:

- 10 12. Under Wage Order Number 16-2001 Section 18, \$50.00 for initial violation for
11 each pay period during which Plaintiff was underpaid, \$100.00 subsequent
12 violations for each pay period during which Plaintiff was underpaid
13 13. The amount that is sufficient to recover unpaid wages.

14 For the Sixth Cause of Action:

- 15 14. For damages constituting unpaid commissions, in the amount of at last least
16 \$100,000;
17 15. For statutory interest including under Civil Code § 3287(a) for any amounts
18 awarded under this claim;

19 For the Seventh Cause of Action:

- 20 16. For California Labor Code Section 226 penalties up to \$4,000;
21 17. For injunctive Relief;
22 18. For attorney fees under California Labor Code Sections 226 and 218.5 as well as
23 interest under California Labor Code Section 218.6;

24 For the Eighth Cause of Action:

- 25 19. Attorney fees and costs under California Labor Code Section 2802c;
26
27
28

1 20. Reimbursement for all reasonably necessary expenses for Plaintiff to perform her
2 job at Defendant;

3
4 For the Ninth Cause of Action:

5 21. For Labor Code Section 203 penalties equal and up to 30 days of all wages and
6 benefits for each day all wages were not paid as required by California Labor
7 Code Sections 201, 204, 202;

8 22. Attorney fees and costs under California Labor Code Section 218.5 and interest
9 under Section 218.6;

10 For the Tenth Cause of Action:

11 23. For the California Labor Code 1102.5 penalty and burden of proof articulated in
12 California Labor Code Section 1102.6;

13 24. For the California Labor Code Section 1102.5 penalties of \$10,000.00;

14 25. Attorney fees for pursuing this Cause of Action under California Labor Code
15 Section 1102.5(j).

16 For the Tenth through the Twelfth Causes of Action:

17 26. For general damages in an amount according to proof, but in excess of the
18 minimum jurisdiction of this court;

19 27. For special damages in an amount according to proof, but in the excess of the
20 minimum jurisdiction of this court, in order to compensate Plaintiff for his loss of
21 past and future earnings, and all damages flowing from Plaintiff's loss of
22 earnings, loss of job security, failure to properly advance within his career, and
23 damage to his reputation;

24 28. For such other and further relief as the Court deems just and proper;

25 29. For all interest as allowed by law;

26 30. For punitive damages, in an amount to be ascertained, according to proof, that
27 will sufficiently punish the Defendant, make an example of Defendant, and deter
28 future conduct;

1 31. For all general and special damages in an amount according to proof, but in the
2 excess of the minimum jurisdiction of this court, in order to compensate Plaintiff
3 for any medical expenses and suffering;

4 For the Thirteenth Cause of Action:

5 32. For all equitable relief available including injunctive relief;

6 For the Fourteenth Cause of Action:

7 33. For California Labor Code Section 2699(f) penalties;

8 34. For California Labor Code Section 2699(g) fees and costs.
9

10
11 DATED: February 28, 2024

EMPLOYMENT LAWYERS GROUP

12
13 By: 

14 Karl Gerber
15 Ann Guleser
16 Attorneys for Plaintiff,
17 MICHAEL HOLMES
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EXHIBIT 1



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Ann

Your Last Name *

Guleser

Firm Name (if any) *

Employment Lawyers Grp

(Enter "in pro per" if you are representing yourself)

Your Email Address *

aguleser@emplaw.net

Your Street Name, Number and Suite/Apt *

13418 Ventura Blvd.

Your Mobile Phone Number

Your City *

Sherman Oaks

Your Work Phone Number

818 783 7300

Your State *

California



Your Zip/Postal Code *

91423

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

MICHAEL HOLMES

Plaintiff/Aggrieved Employee Occupation *

Electrician

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Corporation

Employer Name *

ARS American Residential Services of Californ

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

965 Ridge Lake Blvd, Ste 201

Employer City *

Memphis

Employer State *

Tennessee

Employer Zip/Postal Code *

38120

Employer Industry *

Other

Employer Industry for "Other" *

Electrical, Heating & A/C

Add additional defendants

☒ Add any entity other than an individual

☐ Add an individual/sole proprietor employer

Additional Employer Information (Corporation/General Partnership)

Employer Entity Type

Corporation

Employer Name *

AMERICAN RESIDENTIAL SERVICES L.L.C.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

965 Ridge Lake Blvd, Ste 201

Employer City *

Memphis

Employer State *

Tennessee ▼

Employer Industry *

Other ▼

Employer Zip/Postal Code *

38120

Employer Industry for "Other" *

Electrical, Heating & A/C

Additional Employer Information (Corporation/General Partnership)

Employer Entity Type

Corporation ▼

Employer Name *

[Remove](#)

RIGHTIME HOME SERVICES, INC.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

3030 MYERS ST

Employer City *

RIVERSIDE

Employer State *

California ▼

Employer Zip/Postal Code *

92503

Employer Industry *

Other ▼

Employer Industry for "Other" *

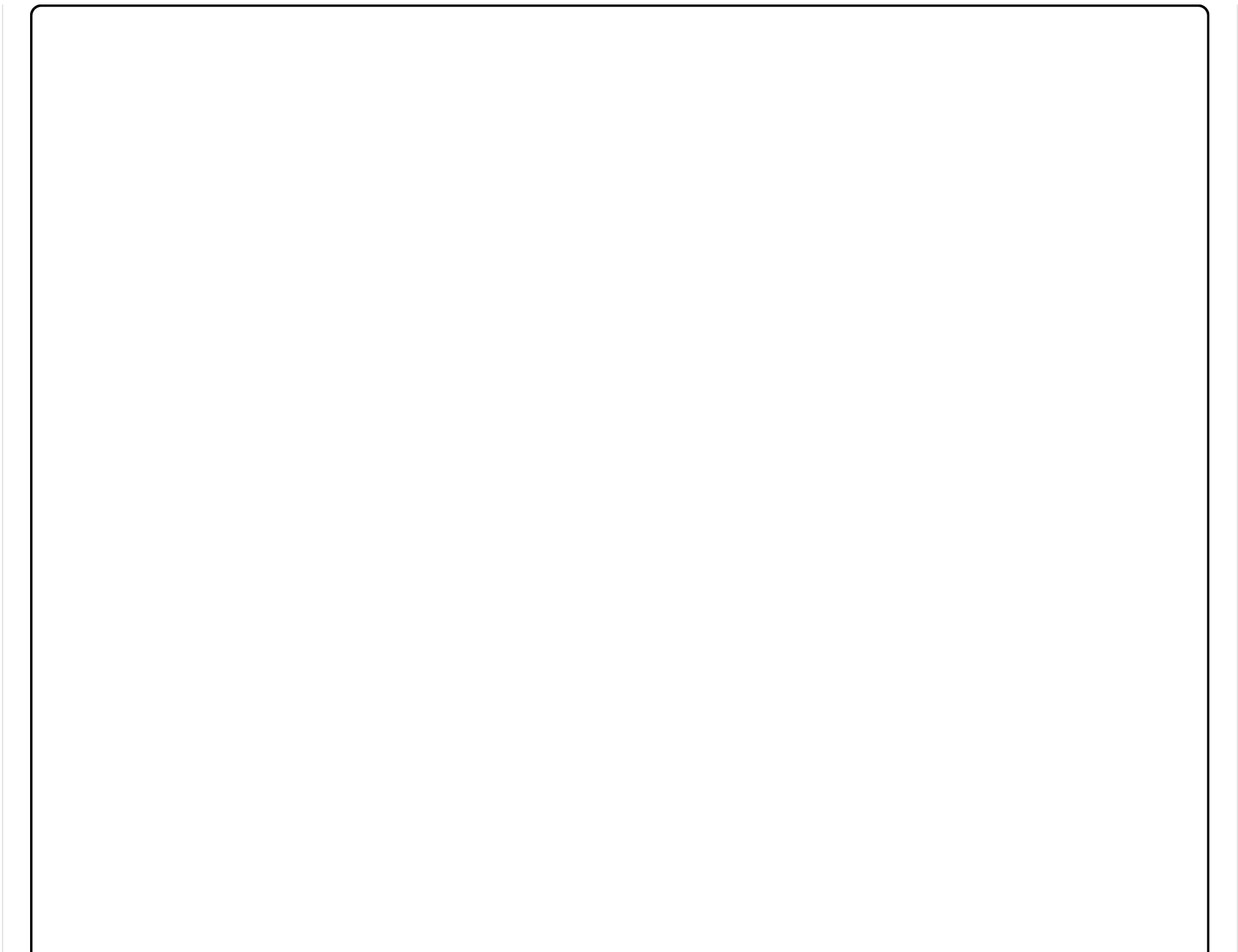
Electrical, Heating & A/C

[Add Additional Employers](#)

Notice General Information

Estimated Number of Employees Impacted by Violations *

20



Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☒ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☒ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☒ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)

Child Labor – Specify Ages

☐ Other

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☒ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

[REDACTED]

Billing Last Name *

[REDACTED]

Billing Email *

aguleser@emplaw.net

Billing Phone

Billing Street Name, Number and Suite/Apt *

[REDACTED]

Billing City *

[REDACTED]

Billing State *

California



Billing Zip/Postal Code *

[REDACTED]

Credit Card Type *

Visa



Credit Card Number *

[REDACTED]

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Holmes PAGA PDF.pdf

Other Attachment – (if any) (must be a .pdf)

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ **I understand that, if I file, I must comply with the redaction rules consistent with this notice.**

Underlying California Labor Code Section 226 violations exist for which PAGA penalties are due under California Labor Code Section 2699.3.

The PAGA group are ARS AMERICAN RESIDENTIAL SERVICES OF CALIFORNIA, INC., AMERICAN RESIDENTIAL SERVICES L.L.C., and RIGHTIME HOME SERVICES' nonexempt employees in California who were employed to provide electrical services including repairs, installations, and equipment sales in California going back one year from the filing of these charges and are estimated to be approximately 20 employees.

The specific PAGA penalties at issue for the PAGA group are: California Labor Code Sections 226.3, 226.4, and 226.6 are violated for the reasons specified in the attached complaint which can be summarized as follows: 1) The pay stubs do not specify the correct overtime rates worked; 2) the pay stubs do not have the correct rates for regular, overtime, and double time hours and in turn do not reflect the correct pay rates, and deductions; 3) Because the employer failed to properly provide employee wage deduction statements for each pay period during the statutory time, a total of \$600 is due per pay period per employee. 4) Meal break and rest break penalties do not appear and the general number of regular, and overtime hours worked are incorrect; overtime was not paid for the first eight hours worked on the seventh consecutive day of work in any one workweek; incorrect hourly wages were reflected in the pay stub making the deductions incorrect. The employer did not provide paystubs. At times, the PAGA group was asked to review 8 or 12 weeks of paystubs but they were not given copies. Paystubs were not given every pay period and commission pay was not reflected on the paystubs.

Underpayments exist due to commissions not factored into the regular rate of pay. The hourly rate to employees did not include the commissions therefore, overtime wages were not covered by the amount paid. Overtime wages were not paid after 8 hours of work daily. Employees who were using their own tools were not paid an hourly rate of twice the minimum wage. Employees were not paid all wages due for commissions, regular hours, overtime hours, and double time.

In addition to the California Labor Code Section 226 violations, California Labor Code Section 201, 202, 203, 510, 516, 1194, 1199 violations led to the violations of California Labor Code Section 558, 558.1 due to failures to pay overtime, and violations of California Labor Code Sections 204(9), 210, 215, and 216. California Labor Code Sections 204, 210, 215, and 216 allow for PAGA penalties and were violated because not all wages earned and due twice during each calendar month were paid, as required by these statutes which allow for additional financial penalties and make the non paying employer guilty of a misdemeanor.

The above 10 PAGA violations per pay period are worth \$1,400.00 in PAGA penalties per employee, per pay period. These violations go back a year before this charge was filed.

Ann Guleser

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Friday, December 8, 2023 5:14 PM
To: aguleser@emplaw.net
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-998827-23

Order Number: ORD-000263054

Total:\$75.00

Card Type: Visa

Date: 12/8/2023

Billing Information

Name: Ann Guleser

Email: aguleser@emplaw.net

Billing Address:

17430 Bullock St.

Encino, California

91316

Ann Guleser

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Friday, December 8, 2023 5:13 PM
To: aguleser@emplaw.net
Subject: Thank you for submission of your PAGA Case.

12/8/2023

LWDA Case No. LWDA-CM-998827-23
Law Firm : Employment Lawyers Grp
Plaintiff Name : MICHAEL HOLMES
Employer: ARS American Residential Services of California, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 2

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature _____ ☐ Agent ☐ Addressee
1. Article Addressed to: Return to: ARS AMERICAN RESIDENTIAL SERVICES OF CALIFORNIA, INC. 1505 Corporation CT CORPORATION SYSTEM AMANDA GARCIA 330 N BRAND BLVD, GLENDALE, CA	B. Received by (Printed Name) _____ C. Date of Delivery _____
2. _____ 7006 3450 0002 4750 4854	D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: _____
Delivery Service	
3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	4. Restricted Delivery? (Extra Fee) ☐ Yes

Domestic Return Receipt

102595-02-M-154

SANTA CLARITA CA 913
UNITED STATES POSTAL SERVICE
DEC 23 PM 1

SANTA CLARITA CA 913

POSTAL SERVICE 23 PM 1

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Employment Lawyers Group
13418 Ventura Blvd.
Sherman Oaks, CA 91423

re: michael holmes

[illegible]

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

AMERICAN RESIDENTIAL SERVICES L.L.C.
1505 Corporation
CT CORPORATION SYSTEM
AMANDA GARCIA 330 N BRAND BLVD.
GLENDALE, CA

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

NDS

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes**
if YES, enter delivery address below: ☐ No

DEC 14 2023

Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

- 4. Restricted Delivery? (Extra Fee) ☐ Yes**

2. Article Number:

7006 3450 0002 4750 4847

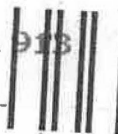
PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

UNITED STATES POSTAL SERVICE

14 DEC 2023 PM 1 L

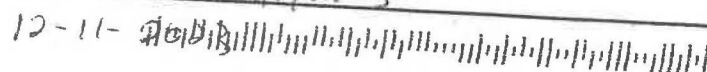


First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

- Sender: Please print your name, address, and ZIP+4 in this box •

Employment Lawyers Group
13418 Ventura Blvd.
Sherman Oaks, CA 91423

re: Michael Holmes



SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

RIGHTIME HOME SERVICES inc. 3
1505 Corporation SPIEGEL & UTRERA, P.C.
VERONICA M FLORES
8939 S. SEPULVEDA BOULEVARD,
LOS ANGELES, CA

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent☐ Addressee

B. Received by (Printed Name)

VFL-MS

C. Date of Delivery

12/13/23

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☒ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7006 3450 0002 4750 4830

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

UNITED STATES POSTAL SERVICE CA 900

13 DEC 2023 PM 11 L

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

- Sender: Please print your name, address, and ZIP+4 in this box •

Employment Lawyers Group
13418 Ventura Blvd.
Sherman Oaks, CA 91423

no. Michael Holmes

12-11-2023