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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 24 2021

Harry Laitan

IN AND FOR THE COUNTY OF SAN BERNARDINO

Case No. CIV SB 2132685

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B).



FAXED

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1 Plaintiff Anthony Guterrez (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Options for Youth-Victor
8 Valley, Inc., Options for Youth-Burbank, Inc., Options for Youth-Upland, Inc., Options for
9 Youth-Action, Inc., Options for Youth-California, Inc., Options for Youth-Duarte, Inc., Options
10 for Youth-San Bernardino, Inc., Options for Youth-San Gabriel, Inc., Options for Youth-San
11 Juan, Inc. (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for
12 himself, and on behalf of all current and former aggrieved employees that worked for
13 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
14 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
15 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
16 damages for those violations, but simply the civil penalties permitted by California Labor Code
17 § 2699.

18 2. California has enacted the PAGA to permit an individual to bring an action on
19 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
20 nature of this action.

21 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
22 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
23 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
24 complaint should be construed as attempting to obtain any relief that would not be available in
25 a PAGA-only action.

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THE PARTIES

4. Defendant Options for Youth-Victor Valley, Inc. is a California Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

5. Defendant Options for Youth-Burbank, Inc. is a California Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

6. Defendant Options for Youth-Upland, Inc. is a California Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

7. Defendant Options for Youth-Action, Inc. is a California Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

8. Defendant Options for Youth-California, Inc. is a California Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. Defendant Options for Youth-Duarte, Inc. is a California Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

10. Defendant Options for Youth-San Bernardino, Inc. is a California Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

11. Defendant Options for Youth-San Gabriel, Inc. is a California Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

12. Defendant Options for Youth-San Juan, Inc. is a California Corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular

1 business throughout California.

2 13. DEFENDANT offers students a personalized flexible approach to education.

3 14. PLAINTIFF alleges there has existed a unity of interest and ownership between
4 Options for Youth-Victor Valley, Inc. and/or Options for Youth-Burbank, Inc. and/or Options
5 for Youth-Upland, Inc. and/or Options for Youth-Action, Inc. and/or Options for Youth-
6 California, Inc. and/or Options for Youth-Duarte, Inc. and/or Options for Youth-San
7 Bernardino, Inc. and/or Options for Youth-San Gabriel, Inc. and/or Options for Youth-San
8 Juan, Inc. such that any individuality and separateness between the entities has ceased and all
9 Defendants are referred to herein as “DEFENDANT.”

10 15. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
11 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest
12 and ownership between DEFENDANT such that any individuality and separateness between
13 the entities has ceased. Options for Youth-Victor Valley, Inc. and/or Options for Youth-
14 Burbank, Inc. and/or Options for Youth-Upland, Inc. and/or Options for Youth-Action, Inc.
15 and/or Options for Youth-California, Inc. and/or Options for Youth-Duarte, Inc. and/or Options
16 for Youth-San Bernardino, Inc. and/or Options for Youth-San Gabriel, Inc. and/or Options for
17 Youth-San Juan, Inc. and DOES 1-50 are therefore alter egos of each other. Adherence to the
18 fiction of the separate existence of DEFENDANT would permit an abuse of the corporate
19 privilege, and would promote injustice by protecting DEFENDANT from liability for the
20 wrongful acts committed by them.

21 16. PLAINTIFF further alleges that Defendants are the alter egos of each other for
22 the following reasons:

23 (A) On the California Secretary of State’s website
24 (<https://businesssearch.sos.ca.gov/>) Options for Youth-Victor Valley, Inc.
25 and/or Options for Youth-Burbank, Inc. and/or Options for Youth-
26 Upland, Inc. and/or Options for Youth-Action, Inc. and/or Options for
27 Youth-California, Inc. and/or Options for Youth-Duarte, Inc. and/or
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Options for Youth-San Bernardino, Inc. and/or Options for Youth-San Gabriel, Inc. and/or Options for Youth-San Juan, Inc. have the same entity address and/or mailing address and/or Agent for Service of Process; and,

(B) On information and belief Options for Youth-Victor Valley, Inc. and/or Options for Youth-Burbank, Inc. and/or Options for Youth-Upland, Inc. and/or Options for Youth-Action, Inc. and/or Options for Youth-California, Inc. and/or Options for Youth-Duarte, Inc. and/or Options for Youth-San Bernardino, Inc. and/or Options for Youth-San Gabriel, Inc. and/or Options for Youth-San Juan, Inc. utilize the same standardized employment forms and issue the same employment policies.

17. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee entitled to overtime pay and meal and rest periods from January of 2020 to June of 2021. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and received additional compensation from DEFENDANT in the form of non-discretionary incentive wages.

18. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by Options for Youth-Victor Valley, Inc. and/or Options for Youth-Burbank, Inc. and/or Options for Youth-Upland, Inc. and/or Options for Youth-Action, Inc. and/or Options for Youth-California, Inc. and/or Options for Youth-Duarte, Inc. and/or Options for Youth-San Bernardino, Inc. and/or Options for Youth-San Gabriel, Inc. and/or Options for Youth-San Juan, Inc. in California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES") during the time period of July 29, 2020 until a date as determined by the Court (the "PAGA PERIOD").

19. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently

or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

20. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

21. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

22. During the PAGA PERIOD, DEFENDANT failed and continues to fail to

1 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
2 minimum and overtime wages. DEFENDANT unlawfully and unilaterally failed to accurately
3 calculate minimum and overtime wages for time worked by PLAINTIFF and other
4 AGGRIEVED EMPLOYEES in order to avoid paying these employees the correct
5 compensation. Specifically, these employees were required to log in and initialize computer
6 systems in order to start keeping track of their time for the workday. This additional time
7 worked was work performed subject to DEFENDANT's control and for DEFENDANT's
8 benefit. Consequently, all this time constitutes "hours worked" and is therefore compensable.
9 PLAINTIFF and AGGRIEVED EMPLOYEES also worked off the clock with respect to time
10 spent undergoing mandatory drug testing or any other testing and/or examination required as
11 a condition of employment. DEFENDANT's policy and practice to not pay employees for
12 compensable work time is evidenced by DEFENDANT's business records. As a result,
13 PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for working
14 without compensation at the correct minimum wage and overtime rates. DEFENDANT's policy
15 and practice to not pay the AGGRIEVED EMPLOYEES the correct compensation for all time
16 worked in accordance with applicable law is evidenced by DEFENDANT's business records.
17 This policy and practice of DEFENDANT was intended to purposefully avoid the payment of
18 the correct compensation as required by California law which allowed DEFENDANT to
19 illegally profit and gain an unfair advantage over competitors who complied with the law.

20 23. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
21 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
22 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
23 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
24 time worked, meaning the time during which an employee was subject to the control of an
25 employer, including all the time the employee was permitted or suffered to permit this work.
26 DEFENDANT required these employees to work off the clock without paying them for all the
27 time they were under DEFENDANT's control. DEFENDANT, as a matter of established
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1 company policy and procedure, administered a uniform practice of rounding the actual time
2 worked and recorded by PLAINTIFF and other AGGRIEVED EMPLOYEES, always to the
3 benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and other
4 AGGRIEVED EMPLOYEES were paid less than they would have been paid had they been paid
5 for actual recorded time rather than “rounded” time. DEFENDANT’s policy and practice not
6 to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is evidenced
7 by DEFENDANT’s business records. Additionally, DEFENDANT required PLAINTIFF to
8 work while clocked out during what was supposed to be PLAINTIFF’s off-duty meal break.
9 PLAINTIFF was from time to time interrupted by work assignments. As a result, PLAINTIFF
10 and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation
11 by working without their time being accurately recorded and without compensation at the
12 applicable minimum wage and overtime rates. To the extent that the time worked off the clock
13 did not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages
14 for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

15 24. State law provides that employees must be paid overtime and meal and rest break
16 premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other
17 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
18 tied to specific elements of an employee’s performance.

19 25. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’
20 compensation was DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
21 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
22 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
23 hourly basis with incentive compensation when the employees met the various performance
24 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
25 overtime and meal and rest break premium pay to PLAINTIFF and other AGGRIEVED
26 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
27 employees’ “regular rate of pay” for purposes of calculating overtime pay and meal and rest
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1 break premium pay. Management and supervisors described the incentive program to potential
2 and new employees as part of the compensation package. As a matter of law, the incentive
3 compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
4 included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
5 overtime compensation and meal and rest break premiums to PLAINTIFF and other
6 AGGRIEVED EMPLOYEES by DEFENDANT.

7 26. In violation of the applicable sections of the California Labor Code and the
8 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
9 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
10 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
11 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
12 compensation as required by California law which allowed DEFENDANT to illegally profit and
13 gain an unfair advantage over competitors who complied with the law. To the extent equitable
14 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
15 PAGA PERIOD should be adjusted accordingly.

16 27. As a result of their rigorous work schedules, PLAINTIFF and other
17 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
18 were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
19 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
20 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
21 DEFENDANT failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with a
22 second off-duty meal period from time to time in which these employees were required by
23 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED
24 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
25 accordance with DEFENDANT's corporate policy and practice.

26 28. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
27 were from time to time also required to work in excess of four (4) hours without being provided
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1 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
2 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
3 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
4 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
5 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
6 AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. As
7 a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES
8 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
9 managers. Additionally, the applicable California Wage Order requires employers to provide
10 employees with off-duty rest periods, which the California Supreme Court defined as time
11 during which an employee is relieved from all work related duties and free from employer
12 control. In so doing, the Court held that the requirement under California law that employers
13 authorize and permit all employees to take rest period means that employers must relieve
14 employees of all duties and relinquish control over how employees spend their time which
15 includes control over the locations where employees may take their rest period. Employers
16 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
17 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
18 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
19 DEFENDANT's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could
20 not leave the work premises during their rest period.

21 29. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
22 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
23 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earned non-
24 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
25 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay
26 to PLAINTIFF and other AGGRIEVED EMPLOYEES their base rates of pay.

27 30. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
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1 employees be calculated by dividing the employee's total wages, not including overtime
2 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
3 of employment.

4 31. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
5 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
6 discretionary incentive wages, including but not limited to, incentives, shift differential pay, and
7 bonuses, which increased their regular rate of pay. However, when sick pay was paid, it was
8 paid at the base rate of pay for PLAINTIFF and the AGGRIEVED EMPLOYEES, as opposed
9 to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

10 32. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
11 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
12 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
13 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
14 PLAINTIFF and the AGGRIEVED EMPLOYEES whose employment has separated are
15 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

16 33. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
17 employment are due and payable twice during each calendar month, on days designated in
18 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(a) expressly
19 requires employers to pay employees all wages owed within eleven (11) days of the close of the
20 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
21 AGGRIEVED EMPLOYEES all wages owed to them within eleven (11) days of the close of
22 the payroll period.

23 34. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
24 to collect or receive from an employee any part of wages theretofore paid by said employer to
25 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
26 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
27 PLAINTIFF and AGGRIEVED EMPLOYEES, failed to disclose all aspects of the deductions
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1 from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES, and
2 thereby failed to pay these employees all wages due at each applicable pay period and upon
3 termination.

4 35. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
5 employees with an accurate itemized wage statement in writing showing, among other things,
6 gross wages earned and all applicable hourly rates in effect during the pay period and the
7 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
8 failed to provide to PLAINTIFF and other AGGRIEVED EMPLOYEES wage statements that
9 identify the correct gross and net wages earned, the applicable number of hours worked and
10 rates of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES were paid on an hourly basis.
11 As such, the wage statements should reflect all applicable hourly rates during the pay period and
12 the total hours worked, and the applicable pay period in which the wages were earned pursuant
13 to California Labor Code Section 226(a). The wage statements DEFENDANT provided to
14 PLAINTIFF and other AGGRIEVED EMPLOYEES failed to identify such information. More
15 specifically, the wage statements failed to identify the accurate total hours worked each pay
16 period. When the hours shown on the wage statements were added up, they did not equal the
17 actual total hours worked during the pay period. Aside, from the violations listed above in this
18 paragraph, DEFENDANT failed to issue to PLAINTIFF and other AGGRIEVED
19 EMPLOYEES an itemized wage statement that lists all the requirements under California Labor
20 Code 226 *et seq.*

21 36. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
23 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
24 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
25 2802, employers are required to indemnify employees for all expenses incurred in the course
26 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
27 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
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1 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
2 directions of the employer, even though unlawful, unless the employee, at the time of obeying
3 the directions, believed them to be unlawful."

4 37. In the course of their employment PLAINTIFF and other AGGRIEVED
5 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
6 cellular phones as a result of and in furtherance of their job duties as employees for
7 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
8 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
9 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
10 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
11 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
12 for the benefit of DEFENDANT.

13 38. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
14 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
15 to accurately calculate and record the correct overtime rate for the overtime worked by
16 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
17 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
18 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
19 calculate and/or pay all required overtime compensation for work performed by the
20 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
21 promulgated thereunder as herein alleged.

22 39. All of the conduct and violations alleged herein occurred during the PAGA
23 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
24 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
25 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
26 AJDAR 12157 (Certified for Publication 12/19/18).

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JURISDICTION AND VENUE

40. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10.

41. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFF and other AGGRIEVED EMPLOYEES.

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

42. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

43. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

44. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private

1 Attorney General Act, brings this Representative Action on behalf of the State of California
2 with respect to himself and all individuals who are or previously were employed by
3 Options for Youth-Victor Valley, Inc. and/or Options for Youth-Burbank, Inc. and/or
4 Options for Youth-Upland, Inc. and/or Options for Youth-Action, Inc. and/or Options for
5 Youth-California, Inc. and/or Options for Youth-Duarte, Inc. and/or Options for Youth-San
6 Bernardino, Inc. and/or Options for Youth-San Gabriel, Inc. and/or Options for Youth-San
7 Juan, Inc. in California and who were classified as non exempt employees ("AGGRIEVED
8 EMPLOYEES") during the time period of July 29, 2020 until a date as determined by the
9 Court (the "PAGA PERIOD").

10 45. On July 29, 2021, PLAINTIFF gave written notice by electronic mail to the
11 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
12 employer of the specific provisions of this code alleged to have been violated as required by
13 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
14 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
15 now commence a representative civil action under PAGA pursuant to Section 2699 as the
16 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
17 defined.

18 46. The policies, acts and practices heretofore described were and are an unlawful
19 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
20 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
21 properly record and provide legally required meal and rest periods, (c) failed to pay
22 minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to
23 reimburse employees for required expenses, and (f) failed to provide wages when due, all in
24 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
25 *et seq.*, 210, 221, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
26 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
27 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
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1 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
2 Labor Code Private Attorney General Act of 2004 as the representative of the State of
3 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
7 severally, as follows:

8 1. On behalf of the State of California and with respect to all AGGRIEVED
9 EMPLOYEES:

10 A) Recovery of civil penalties as prescribed by the Labor Code Private
11 Attorneys General Act of 2004; and,

12 B) An award of attorneys' fees and cost of suit, as allowable under the
13 law, including, but not limited to, pursuant to Labor Code §2699.

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15 Dated: November 24, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

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18 By: 

Norman B. Blumenthal
Attorneys for Plaintiff

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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).