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Attorneys for Plaintiff HECTOR CHAVEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

HECTOR CHAVEZ, an individual, on behalf
 of himself and other similarly aggrieved
 employees and the State of California,

Plaintiff,

vs.

**ASURION, LLC; ASURION UBIF
 FRANCHISE, LLC; and DOES 1-50,**

Defendants.

Unlimited Jurisdiction

Case No.: **21SMCV01620**

**COMPLAINT FOR CIVIL PENALTIES
 UNDER THE PRIVATE ATTORNEYS
 GENERAL ACT OF 2004**

1 Plaintiff Hector Chavez (“Plaintiff”), on behalf of himself and all other similarly aggrieved
2 employees and the State of California, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff, as a proxy for the State of California, brings a representative law
5 enforcement action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code
6 Section 2698 et seq., to recover civil penalties against Defendants Asurion LLC and Asurion UBIF
7 Franchise LLC (“Asurion”). On behalf of himself and other aggrieved employees, Plaintiff seeks
8 to recover civil penalties (75% payable to the Labor Workforce Development Agency and 25%
9 payable to aggrieved employees) owed by Defendants under Labor Code Section 2699 for
10 requiring Plaintiff and aggrieved employees to sign an arbitration agreement that contains an a
11 provision prohibited by law, prohibiting and preventing employees from disclosing the amount of
12 his or her wages, failure to pay rest and meal break premiums at the correct regular rate of
13 compensation, failure to pay paid sick leave at the correct regular rate of pay, failure to maintain
14 complete and accurate records, failure to timely pay all wages during employment, and failure to
15 timely pay all wages upon cessation of employment.

16 **JURISDICTION AND VENUE**

17 2. Venue is proper in the County of Los Angeles because work was performed by
18 aggrieved employees for Defendants in the County of Los Angeles, including in Marina Del Rey,
19 California, and the legal obligations of Defendants to Plaintiff and other aggrieved employees were
20 breached throughout California, including in Los Angeles County.

21 3. The California Superior Court has jurisdiction in this matter because Plaintiff is a
22 resident of California, Defendants are qualified to do business in California and Defendants
23 regularly conduct business in California. Further, there is no federal question at issue as the claims
24 herein are based solely on California law.

25 **THE PARTIES**

26 **A. Plaintiff**

27 4. Plaintiff is over the age of eighteen, and at times mentioned in this complaint, was
28

1 a resident of California. During the one-year period preceding the notification of his claims under
2 the PAGA to Defendants and Labor Workforce and Development Agency (the “LWDA”), Plaintiff
3 was employed by Defendants in California as an hourly paid non-exempt employee at Defendants’
4 electronics repair shops selling warranties, fixing cell phones and other electronic devices from
5 approximately October 2020 through April 2021. Plaintiff and other similarly aggrieved
6 employees earned sales incentives/bonuses for reaching certain sales goals and for each
7 warranty/insurance product they sold on household electronics.

8 5. Plaintiff seeks to represent similarly situated persons who are Aggrieved
9 Employees. Aggrieved Employees are persons who, at any time since the date one year before the
10 date of Plaintiff’s letter notifying Defendants and the LWDA of the alleged violations, were
11 employed at Defendants’ electronics repair shops in California and subjected to the following
12 violations of California law: Labor Code Sections 201-204, 226.7, 232, 246(l), 432.5, 1174(d),
13 1174.5 and the applicable Industrial Welfare Commission (“IWC”) Wage Orders, including, Wage
14 Order 4-2001.

15 6. As such, Plaintiff appears in this action on behalf of himself and on behalf of all
16 other similarly situated aggrieved employees and the State of California.

17 **B. Defendants**

18 7. Plaintiff is informed and believes, and thereon alleges, that Defendants Asurion
19 LLC and Asurion UBIF Franchise LLC (collectively, “Asurion”) are Delaware limited liability
20 companies that do business in California, including in Ventura and Los Angeles Counties, among
21 others. Asurion is a leading provider of device insurance, warranty and support services for cell
22 phones, consumer electronics and home appliances. At all times relevant to this action, Asurion
23 has made its services available throughout California, in part, through its subsidiary uBreakiFix,
24 an electronics repair shop.

25 8. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
26 participation in the conduct herein alleged, of the Defendants sued herein as DOES, but is informed
27 and believes and thereon alleges that said Defendants are legally responsible for the wrongful
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1 conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will
2 amend this complaint to allege the true names and capacities of the DOE Defendants when
3 ascertained. Defendants Asurion LLC and Asurion UBIF Franchise LLC and the DOE Defendants
4 are collectively referred to herein as “Defendants.”

5 9. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
6 all respects pertinent to this action as the agent of one or more of the other Defendants, carried out
7 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
8 Defendant are legally attributable to one or more of the other Defendants.

9 **FACTS RELEVANT TO PLAINTIFF’S CLAIMS**

10 10. At all relevant times, Defendants employed Plaintiff and other similarly aggrieved
11 employees subject to Labor Code Section 435.2. Labor Code Section 432.5 provides: “No
12 employer, or agent, manager, superintendent, or officer thereof, shall require any employee or
13 applicant for employment to agree, in writing, to any term or condition which is known by such
14 employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

15 11. When Defendants hired Plaintiff, they required Plaintiff to sign a document entitled
16 “Employment, Confidential Information, Invention Assignment and Arbitration Agreement” as a
17 condition of employment (the “Agreement”). Among other things, the Agreement contains an
18 arbitration agreement and confidentiality agreement. Attached as **Exhibit A** to **Exhibit 1** hereto is
19 a true and correct copy of the Agreement dated October 30, 2020. On information and belief,
20 Defendants also required all other aggrieved employees to sign the Agreement as a condition of
21 employment.

22 12. The Agreement Defendants required Plaintiff to sign as a condition of his
23 employment contains in Section 7(D) a purported waiver of Plaintiff’s right to bring any claim
24 related to his employment on a representative basis under California’s Private Attorneys General
25 Act of 2004, Labor Code Section 2698 et seq. (“PAGA”) that is unenforceable as a matter of settled
26 California Law.

27 13. Section 7(D) of the Agreement states in bold, in relevant part:
28

1 ***Class Action Waiver.*** Both the Company and I agree to bring any dispute in
2 arbitration on an individual basis only, and not on a class, collective,
3 representative or private attorney general basis. There will be no right or
4 authority for any dispute to be brought, heard or arbitrated as a class,
5 collective, representative or private attorney general action, or as a member
6 in any purported class, collective, representative or private attorney general
 proceeding, including without limitation pending but not certified class actions
 (“Class Action Waiver”). Disputes regarding the validity and enforceability of the
 Class Action Waiver may be resolved only by a civil court of competent jurisdiction
 and not by an arbitrator.

7 (Exhibit A to Exhibit 1 hereto at § 7 (original bold and italics).)

8 14. At the time Defendants required Plaintiff to sign the Agreement containing the
9 waiver of his right to a trial of PAGA claims in October 2020, it was well-established that such
10 PAGA waivers are contrary to California law and unenforceable. *See Iskanian v. CLS*
11 *Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 384 (“We conclude that where, as here,
12 an employment agreement compels the waiver of representative claims under the PAGA, it is
13 contrary to public policy and unenforceable as a matter of state law.”); *Juarez v. Wash Depot*
14 *Holdings, Inc.* (2018) 24 Cal. App. 5th 1197, 1202–03 (“court properly concluded that the PAGA
15 waiver set forth in the handbook is unenforceable as against public policy”); *Lawson v. ZB, N.A.*
16 (2017) 18 Cal. App. 5th 705, 725, as modified (Dec. 21, 2017) (same).

17 15. Despite knowing that the Agreement contains an unlawful and unenforceable
18 PAGA waiver, Defendants continued to require its employees to sign these arbitration agreements
19 during the one-year period preceding Plaintiff’s submission of his notice letter to Defendants and
20 the LWDA. By requiring Plaintiff and other aggrieved employees to sign mandatory arbitration
21 agreements that Defendants knew contained an unlawful PAGA waiver, Defendants violated
22 section 432.5. In doing so, Defendants deterred their employees from pursuing PAGA claims that
23 the employees otherwise are entitled to pursue in court.

24 16. At all relevant times, Defendants employed Plaintiff and other similarly aggrieved
25 employees subject to Labor Code Section 232. Under Labor Code Section 232, employers are
26 prohibited from preventing an employee “from disclosing the amount of his or her wages” (Lab.
27 Code § 232(a)) and prohibits employers to “require an employee to sign a waiver or other
28

document that purports to deny the employee the right to disclose the amount of his or her wages” (Lab. Code § 232(b)).

17. Section 2 of the Agreement Defendant required Plaintiff and other similarly aggrieved employees to sign as a condition of employment is entitled “Confidential Information” and precluded Plaintiff from disclosing his wages by requiring:

at all times during the term of my employment and thereafter, to hold in strictest confidence, and not to use or to disclose to any person, firm or corporation, except as such use or disclosure is required in connection with my work for the Company or unless the Chief Executive Officer of the Company (or his/her designee) otherwise expressly authorizes in writing, any Confidential Information.” Section 2 defines “Confidential Information” to include, among other things, “information regarding the skills, compensation and career path and evaluations of the Company’s employees.

(Exhibit A to Exhibit 1 hereto at § 2.)

18. At all relevant times, Defendants employed Plaintiff and other similarly aggrieved employees subject to Labor Code Section 226.7 and the applicable Wage Orders, including Wage Order 4-2001(11) and (12). Labor Code Section 226.7 (emphasis added) states, in relevant part: “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law,..., the employer shall pay the employee one additional hour of pay at the employee’s *regular rate of compensation* for each work day that the meal or rest period is not provided.”

19. Similarly, Wage Order 4-2001(11) (emphasis added) provides: “If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s *regular rate of compensation* for each workday that the meal period is not provided.” Wage Order 4-2001(11)(B), (12)(B) (same re rest periods).

20. During the relevant period, Defendants paid premium wages to Plaintiff and other similarly aggrieved employees for violations of the California’s meal and rest break laws. However, Defendants paid these employees one hour of pay at their base hourly rates when compensating those employees for violations of the meal and rest period requirements, including in periods when employees earned bonuses and other non-discretionary remuneration (noted on

1 their wage statements as “Sales Incentive”, “UBIF bonus” and “Ace Reward” among others)
2 required to be factored into an employee’s regular rate of compensation. *Ferra v. Loews*
3 *Hollywood Hotel, LLC* (Cal. July 15, 2021) --- P.3d ---- (holding that when employers pay one-
4 hour meal and rest period premiums to employees who report that they were not provided
5 compliant meal or rest periods, the pay is not at the employee’s normal “base” hourly rate but must
6 be at the same FLSA “regular rate” that is used to calculate overtime premiums).

7 21. For example, during the two pay periods in the month of November 2020,
8 Defendants paid Plaintiff premiums for 14 meal period violations. For that same month, Plaintiff
9 earned and was paid \$370 in Sales Incentives and a UBIF bonus of \$39.29. However, Defendants
10 paid Plaintiff’s premiums at his base hourly rate of \$13.00 because it did not factor the Sales
11 Incentive or UBIF bonus into the regular rate of compensation for the premiums.

12 22. Throughout Plaintiff’s employment with Defendants, including during the one-year
13 period before Plaintiff notified Defendants and the LWDA of his claims, Plaintiff and other
14 similarly aggrieved employees were entitled to “paid sick days” pursuant to the California Healthy
15 Workplaces, Healthy Families Act of 2014, California Labor Code sections 245, et seq.

16 23. Labor Code Section 246(*I*) requires that employers pay sick time pay to non-exempt
17 employees at the employee’s “regular rate of pay.” Employers may either calculate “paid sick
18 days” for non-exempt employees in California at the regular rate of pay for the workweek in which
19 the employee uses paid sick time or by dividing the employee’s total wages, not including overtime
20 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of
21 employment. (Lab. Code § 246(*I*)(1-2)). The “regular rate of pay” includes all remuneration for
22 employment paid to the employee and includes non-discretionary incentive bonuses.

23 24. On information and belief, during the relevant period, aggrieved employees accrued
24 and took paid sick leave. However, Defendants failed to include such non-discretionary
25 remuneration when determining the “regular rate of pay” for these employees for purposes of sick
26 time pay when they were paid sick time pay and non-discretionary bonuses in the same pay period.
27 Instead, Defendants only paid these aggrieved employees paid sick leave at their base hourly rate,

1 rather than at their “regular rate of pay.”

2 25. At all relevant times, Defendants employed Plaintiff and other similarly aggrieved
3 employees subject to Labor Code Section 204. California Labor Code § 204, subdivision (a), states
4 that all wages earned are due and payable twice during each calendar month on days designated in
5 advance by the employers.

6 26. During the one-year period before Plaintiff notified Defendants and the LWDA of
7 his claims, Defendants did not correctly pay Plaintiff and other similarly aggrieved employees the
8 meal and rest premiums owed for meal and rest break violations (as alleged above). Defendants
9 also failed to include such non-discretionary remuneration when determining the “regular rate of
10 pay” for these employees for purposes of sick time pay when they were paid sick time pay and
11 incentive bonuses in the same pay period. Defendants willfully failed to timely pay Plaintiff and
12 other similarly aggrieved employees all wages due for work performed and this failure continued
13 through the time in which they were employed by Defendants. As a result, Defendants violated
14 Labor Code § 204.

15 27. Labor Code Section 1174 states, “[e]very person employing labor in this state
16 shall...(d) [k]eep, at a central location in the state or at the plants or establishments at which
17 employees are employed, payroll records showing the hours worked daily by and the wages paid
18 to, ..., employees employed at the respective plants or establishments.” The “Records” section of
19 the applicable IWC Wage Order states that every employer shall keep accurate information with
20 respect to each one of its employees, including time records showing when the employee begins
21 and ends each work period and meal period, total hours worked in the payroll period and applicable
22 rates of pay, and total wages paid each payroll period. (*See* Wage Order 4-2001(7)).

23 28. Defendants failed to keep accurate information with respect to Plaintiff’s and other
24 similarly aggrieved employees’ payroll, including the applicable rates of pay and total wages
25 earned (such as non-discretionary remuneration when determining the regular rate of
26 compensation for the payment of meal and rest break premiums) each payroll period as required
27 by the “Records” section of the applicable IWC Wage Order. Therefore, Defendants knowingly
28

1 and intentionally failed to keep and maintain accurate records as required by Labor Code section
2 1174.

3 29. Pursuant to Labor Code Section 201 and 202, Defendants are required to
4 immediately pay all wages owed in the case of a discharge or resignation when the resigning
5 employee provided at least three days' notice of resignation or within 72 hours for those employees
6 who resign and provide less than 3 days' notice. Labor Code Section 203 provides for continuation
7 of wages, from the day earned and unpaid were due upon termination until paid, for a maximum
8 of 30 days.

9 30. Plaintiff and other aggrieved employees have ceased their employment with
10 Defendants. Upon the cessation of that employment relationship (and as prescribed by statute),
11 they did not receive all wages owed. Namely, said former employees (including Plaintiff) did not
12 receive all wages due to Defendants' failure to account for all sick leave pay and failure to pay all
13 premium wages for missed rest and meal periods. Plaintiff and those similarly situated, upon
14 termination, did not receive all owed wages on the date of termination, or within 72 hours if they
15 resigned. Therefore, Defendants have violated and continue to violate Labor Code Sections 201
16 and 202, because they have not paid the aforementioned wages and have violated Section 203
17 because they have not paid the waiting time penalties for their failure to pay the final wages at the
18 cessation of employment.

19 31. As a result of these violations, Plaintiff seeks on behalf of himself and all other
20 similarly aggrieved employees, penalties under PAGA.

21 **FIRST CAUSE OF ACTION**

22 **CIVIL PENALTIES UNDER PAGA**

23 **(By Plaintiff, Aggrieved Employees and the State of California against Defendants)**

24 32. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
25 though set forth herein.

26 33. At all times relevant to this action, Plaintiff and other Aggrieved Employees were
27 "aggrieved employees" within the meaning of Labor Code Section 2699.

1 34. Defendants' conduct as described herein, arising from Defendants' requirement
2 that Plaintiff and aggrieved employees sign an arbitration agreement that contains a provision
3 prohibited by law, prohibiting and preventing employees from disclosing the amount of his or her
4 wages, failure to pay rest and meal break premiums at the correct regular rate of compensation,
5 failure to pay sick days at the correct regular rate of pay, failure to maintain complete and accurate
6 records, failure to timely pay all wages during employment, and failure to timely pay all wages
7 upon cessation of employment, constitute violations of Labor Code Sections 201-204, 226.7, 232,
8 246(l), 432.5, 1174(d), 1174.5 and the applicable IWC Wage Orders, including Sections 7, 11, and
9 12 of Wage Order 4-2001.

10 35. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf
11 of himself and other current or former employees, to bring a civil action to recover civil penalties
12 pursuant to the procedures specified in Labor Code Section 2699.3.

13 36. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
14 Section 2699.3. By letter dated July 20, 2021, Plaintiff gave written notice to the LWDA via its
15 online filing system and by certified mail to Defendants of the specific provisions of the Labor
16 Code alleged to have been violated, including the facts and theories to support the alleged
17 violations. A true and correct copy of the July 20, 2021, letter is attached hereto as **Exhibit 1**. To
18 date, more than 65 days after the postmark date of July 20, 2021, the LWDA has not advised
19 Plaintiff that it intends to investigate Plaintiff's allegations.

20 37. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved
21 Employees are entitled to civil penalties for Defendants' violations of the Labor Code and the
22 applicable IWC Wage Orders, including Wage Order 4-2001, in the amount of one hundred dollars
23 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
24 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant
25 to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be distributed to the
26 LWDA, and 25% shall be distributed to the aggrieved employees.

27 38. Labor Code Section 1174.5 imposes a civil penalty of \$500 for an employer's
28

1 failure to maintain accurate and complete records. This civil penalty is in addition to the civil
2 penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor
3 Code section 2699 for a violation of Labor Code Section 1174(d).

4 39. Defendants' failure to maintain accurate and complete records constitutes an injury
5 as defined under Labor Code Section 1174. Therefore, Plaintiff and other similarly aggrieved
6 employees have suffered an injury for purposes of Labor Code Sections 1174.5 and 2699 and are
7 entitled to recover the greater of all actual damages or the amount specified in Sections 1174.5 and
8 2699 per violation.

9 40. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of
10 reasonable attorney's fees and costs in connection with his claims for civil penalties.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff on behalf of himself and all others similarly aggrieved
13 employees, prays for relief and judgment against Defendants as follows:

- 14 1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
15 25% payable to aggrieved employees);
16 2. Costs;
17 3. Reasonable attorney's fees; and
18 4. Such other and further relief as this Court may deem just and proper.

19 Dated: September 24, 2021

MOSS BOLLINGER, LLP

20
21 By: 

22 Jeremy F. Bollinger

23 Dennis F. Moss

Ari E. Moss

24 Jorge A. Flores

Attorneys for Plaintiff HECTOR CHAVEZ

EXHIBIT 1

To Complaint

Chavez v. Asurion LLC et al.



Moss Bollinger
LLP

JEREMY F. BOLLINGER
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jeremy@mossbollinger.com

July 20, 2021

VIA PAGA ONLINE FILING

Secretary Julie Su
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Asurion, LLC
c/o National Registered Agents, Inc.
330 N. Brand Blvd.
Glendale, CA 91203

Asurion UBIF Franchise, LLC
c/o National Registered Agents, Inc.
330 N. Brand Blvd.
Glendale, CA 91203

Re: Notice pursuant to Labor Code Section 2699.3(a)(1)
Labor Code Private Attorney General Act ("PAGA")

Employer: Asurion, LLC and Asurion UBIF Franchise, LLC

Employee: Hector Chavez, on behalf of himself and on behalf of all current and former employees of Asurion, LLC and Asurion UBIF Franchise, LLC

Dear Secretary Su:

Pursuant to the Private Attorney General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee, Hector Chavez ("Mr. Chavez" or "Plaintiff"), on behalf of himself and all other similarly situated California employees, gives notice that his former employer, Asurion, LLC and Asurion UBIF Franchise, LLC (collectively, "Asurion" or "Defendant") violated the California Labor Code throughout his employment and within the one

year prior to the mailing of this letter as follows.

The Parties

Defendant owns and operates uBreakiFix stores throughout California. Defendant employed Plaintiff at its uBreakiFix stores in Thousand Oaks and Marina Del Rey in California between October 2020 and April 2021. Plaintiff sold warranties and fixed cell phones and other electronic devices. Plaintiff and other aggrieved employees earned sales incentives/bonuses for reaching certain sales goals and for each warranty/insurance product they sold on household electronics. They also earned incentives for working additional shifts. These additional forms of non-discretionary pay appeared on their wage statements as “Sales Incentive”, “UBIF bonus” and “Ace Reward”, among other things.

The Claims

Violation of Labor Code § 432.5

Labor Code section 432.5 provides: “No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

When Defendant hired Plaintiff, it required Plaintiff to sign a document entitled “Employment, Confidential Information, Invention Assignment, and Arbitration Agreement” as a condition of employment (the “Agreement”). Among other things, the Agreement contains an arbitration agreement and a confidentiality agreement. Attached hereto as **Exhibit A** is a true and correct copy of the Agreement dated October 30, 2020. On information and belief, Defendant required all other aggrieved employees on whose behalf Plaintiff brings these claims to sign the Agreement as a condition of their employment.

The Agreement Defendant required Plaintiff to sign as a condition of his employment contains in Section 7(D) a purported waiver of Plaintiff’s right to bring any claim related to his employment on a representative basis under California’s Private Attorneys General Act of 2004, Labor Code Section 2698 et seq. (“PAGA”) that is unenforceable as a matter of settled California law.

Section 7(D) of the Agreement states in bold, in relevant part:

Class Action Waiver. Both the Company and I agree to bring any dispute in arbitration on an individual basis only, and not on a class, collective, representative or private attorney general basis. There will be no right or authority for any dispute to be brought, heard or arbitrated as a class, collective, representative or private attorney general action, or as a member in any purported class, collective, representative or private attorney general

proceeding, including without limitation pending but not certified class actions (“Class Action Waiver”). Disputes regarding the validity and enforceability of the Class Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator.

Exhibit A § 7 hereto (original bold and italics).

At the time Defendant required Plaintiff to sign the Agreement containing the waiver of his right to a trial of PAGA claims in October 2020, it was well-established that such PAGA waivers are contrary to California law and unenforceable. *See Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 384 (“We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”); *Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal. App. 5th 1197, 1202–03 (“court properly concluded that the PAGA waiver set forth in the handbook is unenforceable as against public policy”); *Lawson v. ZB, N.A.* (2017) 18 Cal. App. 5th 705, 725, as modified (Dec. 21, 2017) (same).

Despite knowing that the Agreement contains an unlawful and unenforceable PAGA waiver, Defendant continued to require its employees to sign these arbitration agreements during the one-year period preceding Plaintiff’s submission of this notice letter

By requiring Plaintiff and other aggrieved employees to sign mandatory arbitration agreements that Defendant knew contained an unlawful PAGA waiver, Defendants violated section 432.5. In doing so, Defendant deterred its employees from pursuing PAGA claims that they otherwise are entitled to pursue in court.

Under California Labor Code § 2699(f)(2), civil penalties of one hundred dollars (\$100) per pay period for the first violation (i.e., pay period in which the unlawful provision was in effect) and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation are owed per Plaintiff and each aggrieved employee of Defendant in California who was required to sign a mandatory arbitration agreement containing the same illegal term in violation of California Labor Code § 432.5—that is, the term requiring the employee to waive his or her right to bring a representative action under PAGA—for as long as the Agreement was in effect.

Violations of Labor Code § 232

Labor Code section 232 prohibits employers from preventing an employee “from disclosing the amount of his or her wages” (Lab. Code § 232(a)) and from “[r]equire an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages (Lab. Code § 232(b)).

Section 2 of the Agreement Defendant required Plaintiff and other aggrieved employees to sign as a condition of employment is entitled “Confidential Information”. Section 2 precludes Plaintiff “at all times during the term of my employment and thereafter, to hold in strictest confidence, and not to use or to disclose to any person, firm or corporation, except as such use or disclosure is required in connection with my work for the Company or unless the Chief Executive Officer of the Company (or his/her designee) otherwise expressly authorizes in writing, any Confidential Information”. Section 2 defines “Confidential Information” to include, among other things, “information regarding the skills, compensation and career path and evaluations of the Company’s employees”. (Exhibit A § 2 hereto.)

Section 2 of the Agreement’s prohibition against disclosing one’s “compensation” violated Labor Code section 232. As a result, Defendant is liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation (i.e., pay period in which the unlawful provision was in effect) and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Violations of California Meal and Rest Period Requirements

Wage Order 4-2001(11) provides: “If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s *regular rate of compensation* for each workday that the meal period is not provided.” Wage Order 4-2001(11)(B), (12)(B) (same re rest periods) (emphasis added); see also Labor Code § 226.7(c) (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, ..., the employer shall pay the employee one additional hour of pay at the employee’s *regular rate of compensation* for each work day that the meal or rest period is not provided.” (Emphasis added)).

During the relevant period, Defendant paid premium wages to Plaintiff and other aggrieved employees for violations of the California’s meal and rest break laws. However, Defendant paid these employees one hour of pay at their base hourly rates when compensating those employees for violations of the meal and rest period requirements, including in periods when the employees earned bonuses and other non-discretionary remuneration (noted on their wage statements as “Sales Incentive”, “UBIF bonus” and “Ace Reward” among others) required to be factored into an employee’s regular rate of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (Cal. July 15, 2021) --- P.3d ---- (holding that when employers pay one-hour meal and rest period premiums to employees who report that they were not provided compliant meal or rest periods, the pay is not at the employee’s normal “base” hourly rate but must be at the same FLSA “regular rate” that is used to calculate overtime premiums).

For example, during the two pay periods in the month of November 2020, Defendant paid Plaintiff premiums for 14 meal period violations. For that same month, Plaintiff earned and was

paid \$370 in Sales Incentives and a UBIF bonus of \$39.29. However, Defendant paid Plaintiff's premiums at his base hourly rate of \$13.00 because it did not factor the Sales Incentive or UBIF bonus into the regular rate of compensation for the premiums.

As a result of Defendant's failure to factor non-discretionary pay into Plaintiff and other aggrieved employees' regular rate of compensation for the payment of meal and rest break premiums, Defendant is liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Violations of Labor Code § 246(I)

During their employment with Defendant, Plaintiff and aggrieved employees were entitled to "paid sick days" pursuant to the California Healthy Workplaces, Healthy Families Act of 2014, California Labor Code sections 245, et seq.

Labor Code section 246(I) requires that employers pay sick time pay to non-exempt employees at the employee's "regular rate of pay." Employers may either calculate "paid sick days" for non-exempt employees in California at the regular rate of pay for the workweek in which the employee uses paid sick time or by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. Lab. Code § 246(I)(1-2). The "regular rate of pay" includes all remuneration for employment paid to the employee and includes non-discretionary incentive bonuses.

During the relevant period, aggrieved employees accrued and took paid sick leave. However, Defendant failed to include such non-discretionary remuneration when determining the "regular rate of pay" for these employees for purposes of sick time pay when they were paid sick time pay and non-discretionary bonuses in the same pay period. Instead, Defendant only paid these aggrieved employees paid sick leave at their base hourly rate, rather than at their "regular rate of pay."

As a result of Defendant's failure to factor non-discretionary pay into its employees' regular rate of compensation for the payment of sick leave pay, Defendant is liable for civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period for the first violation and two hundred dollars (\$200) per aggrieved employee per pay period for each subsequent violation.

Violations of Labor Code §§ 201-203

Plaintiff (and others) have ceased their employment by Defendant. Plaintiff left his employment with Defendant in April 2021. Upon the cessation of that employment relationship (and as prescribed by statute), Plaintiff (and others) did not receive all wages owed. Namely, said former

employees (including Plaintiff) did not receive all wages due to Defendants' failure to account for all sick leave pay and failure to pay all premium wages for missed rest and meal periods. Plaintiff and those similarly situated, upon termination, did not receive all owed wages on the date of termination, or within 72 hours if they resigned. Therefore, Defendant has violated and continues to violate Labor Code sections 201 and 202, because it has not paid the aforementioned wages and has violated section 203 because it has not paid the waiting time penalties for its failure to pay the final wages at the cessation of employment.

Violations of Labor Code § 204

California Labor Code § 204, subdivision (a), states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employers. Defendant did not correctly pay Plaintiff and other aggrieved employees the meal and rest premiums owed for meal and rest break violations (as alleged herein). Defendant also failed to include such non-discretionary remuneration when determining the "regular rate of pay" for these employees for purposes of sick time pay when they were paid sick time pay and incentive bonuses in the same pay period. Defendant willfully failed to timely pay Plaintiff and other aggrieved employees all wages due for work performed and this failure continued through the time in which they were employed by Defendant. As a result, Defendant violated California Labor Code § 204.

As Defendant failed to pay Plaintiff and other aggrieved employees as required by California Labor Code § 204, when such violations occurred Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Violations of Labor Code § 1174(d), 1174.5 and IWC Wage Order 4-2001(7)

Labor Code section 1174 states, "[e]very person employing labor in this state shall... (d) [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments." The "Records" section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period. Wage Order 4-2001(7).

Defendant failed to keep accurate information with respect to Plaintiff's and other aggrieved employees payroll, including the applicable rates of pay and total wages earned (such as non-discretionary remuneration when determining the regular rate of compensation for the payment of meal and rest break premiums) each payroll period as required by the "Records" section of the applicable IWC Wage Order. Therefore, Defendant knowingly and intentionally failed to keep and maintain accurate records as required by Labor Code section 1174.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

Defendant's failure to maintain accurate and complete records constitutes an injury as defined under Labor Code § 1174. Therefore, Plaintiff and other aggrieved employees have suffered an injury for purposes of Labor Code §§ 1174.5 and 2699 and are entitled to recover the greater of all actual damages or the amount specified in §§ 1174.5 and 2699 per violation.

As Defendant failed to maintain accurate records of Plaintiff and other aggrieved employees as required by California Labor Code § 1174, when such violations occurred, Defendant is liable for penalties of \$100 per pay period for the first violation within the statutory period, and \$200 per pay period for each additional violation.

Civil Penalties

As a result of the foregoing, Defendant is liable for civil penalties as provided for by California law. Consequently, Plaintiff and all other aggrieved employees of Defendant are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including but not limited to Labor Code § 2698 *et seq.*

Conclusion

Defendant violated and continues to violate the Labor Code section identified above. Plaintiff requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, Plaintiff requests that the agency inform him if it does not intend to investigate these violations so that he may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984, Ext. 6.

Sincerely,



Jeremy F. Bollinger
MOSS BOLLINGER LLP

Encl.

EXHIBIT A

to Notice pursuant to

Labor Code § 2699.3(a)(1)

Chavez v. Asurion, LLC et al.

EMPLOYMENT, CONFIDENTIAL INFORMATION, INVENTION ASSIGNMENT, AND ARBITRATION AGREEMENT

As a condition of my employment with Asurion, LLC, its subsidiaries, affiliates, successors or assigns (together the "Company"), and in consideration of my employment with the Company, my receipt of the compensation now and hereafter paid to me by the Company, and my ability to access Confidential Information (defined below), develop goodwill with customers and/or receive specialized training by the Company, I agree to the following:

1. *Employment for Unspecified Duration.*

I UNDERSTAND AND ACKNOWLEDGE THAT MY EMPLOYMENT WITH THE COMPANY IS FOR AN UNSPECIFIED DURATION AND UNLESS PROHIBITED BY LAW, CONSTITUTES "AT-WILL" EMPLOYMENT, WHICH MEANS THAT THIS EMPLOYMENT RELATIONSHIP MAY BE TERMINATED AT ANY TIME, WITH OR WITHOUT GOOD CAUSE OR FOR ANY OR NO CAUSE, AT THE OPTION EITHER OF THE COMPANY OR ME, WITH OR WITHOUT NOTICE. I ALSO UNDERSTAND THAT ANY REPRESENTATION TO THE CONTRARY IS UNAUTHORIZED AND NOT VALID UNLESS OBTAINED IN WRITING AND SIGNED BY THE CHIEF EXECUTIVE OFFICER OF THE COMPANY (OR HIS/HER DESIGNEE).

*****FOR MONTANA EMPLOYEES ONLY: During my probationary period of employment, I understand and acknowledge that my employment may be terminated at the option of either the Company or me on notice to the other for any reason or for no reason. After my probationary period of employment, I understand and acknowledge that my employment only may be terminated for good cause.***

2. *Confidential Information.*

A. *Confidential Information.* During the period of my employment with the Company, I acknowledge that the Company has disclosed and will disclose to me Confidential Information (defined below) of the Company which the Company takes great pains to safeguard from unauthorized use and disclosure. I agree at all times during the term of my employment and thereafter, to hold in strictest confidence, and not to use or to disclose to any person, firm or corporation, except as such use or disclosure is required in connection with my work for the Company or unless the Chief Executive Officer of the Company (or his/her designee) otherwise expressly authorizes in writing, any Confidential Information (defined below). I understand and agree that "Confidential Information" means information, or a compilation of information, in any form (tangible or intangible), related to the Company's business that has not appropriately been made public and that is not generally known to the public or to other persons who might obtain value or competitive advantage from its disclosure or use, including (a) technical data, engineering and hardware configuration information, trade secrets, computer source and object code, programs, other works of authorship, developments, inventions, ideas, processes, formulae,

techniques, designs, drawings, know-how, improvements, and discoveries, (b) plans or other information concerning the Company's research, products and services, sales and pricing, and markets therefore, including without limitation, customer lists and contact information, customers and business partners (including, but not limited to, customers and business partners of the Company on whom I called or with whom I became acquainted during the term of my employment), marketing, finances or other business information, (c) information regarding the skills, compensation and career path and evaluations of the Company's employees, contractors, and any other service providers of the Company, and (d) the existence and content of any non-public business discussions, negotiations, or agreements between the Company and any third party disclosed to me over the course of my employment.

B. *Former Employer Information.* I represent that my employment by the Company does not and will not breach any agreement with any former or concurrent employer, including any non-compete agreement or any agreement to keep in confidence information acquired by me in confidence or trust prior to my employment by the Company. I agree that I will not, during my employment with the Company, improperly use or disclose any confidential information or trade secrets of any former or concurrent employer or other person or entity to whom I have an obligation of confidentiality and that I will not bring onto the premises of the Company any unpublished document or any confidential information belonging to any such employer, person or entity to whom I have an obligation of confidentiality, unless consented to in writing by such employer, person or entity.

C. *Third Party Information.* I recognize that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes ("Third Party Information"). During the term of my employment and thereafter, I agree to hold all Third Party Information in the strictest confidence and not to disclose it to any person (other than Company personnel who need to know such information in connection with my work for the Company), firm or corporation or to use it except in connection with my work for the Company, or except as may be expressly authorized by an officer of the Company in writing.

D. *Exception.* The obligations regarding the Confidential Information hereunder shall not apply to Confidential Information which becomes publicly known through no fault of my own or another person's breach of a confidentiality obligation. The obligation not to disclose Confidential Information shall not preclude compliance with a lawful request of any regulatory authority responsible for the regulation of any party or pursuant to the subpoena power of any court, tribunal, regulatory authority, or other body so empowered, provided that the parties shall avail themselves of any rules and regulations of that regulatory authority or other body in order to keep Confidential Information non-disclosed. I agree that if disclosure of Confidential Information is compelled by law, I will give the Company as much written notice as possible under the circumstances, will refrain from use or disclosure for as long as the law allows, and will cooperate with the Company to protect such information, including taking every reasonable

step to protect against unnecessary disclosure. Notice should be given to the Company's General Counsel.

E. *Time Limitation.* If an additional time limitation on the foregoing restrictions is required in order for them to be enforceable then the restriction against disclosure of Confidential Information shall be limited to a period of two (2) years following the termination of my employment (whatever the cause) for any information that does not qualify as a trade secret. Trade secret information will remain protected at all times and nothing herein shall be construed to reduce or diminish the applicability of trade secret protections, statutory or common law, that apply to the Company's trade secrets independent from this Agreement.

3. *Inventions.*

A. *Inventions Retained and Licensed.* I have attached hereto, as Exhibit A, a list describing all inventions, original works of authorship, developments, improvements, and trade secrets which were made by me prior to my employment with the Company (collectively referred to as "Prior Inventions"), which belong to me, which relate to the Company's proposed business, products or research and development, and which are not assigned to the Company hereunder; or, if no such list is attached, I represent that there are no such Prior Inventions. If in the course of my employment with the Company, I incorporate into a Company product, process or service a Prior Invention owned by me or in which I have an interest, I hereby grant to the Company a nonexclusive, royalty-free, fully paid-up, irrevocable, perpetual, worldwide license to make, have made, modify, use and sell such Prior Invention as part of or in connection with such product, process or service, and to practice any method related thereto.

B. *Assignment of Inventions.* I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assign to the Company, or its designee, all my right, title, and interest in and to any and all inventions, original works of authorship, developments, concepts, improvements, designs, discoveries, ideas, trademarks or trade secrets, whether or not patentable or registrable under copyright or similar laws, which I may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time I am in the employ of the Company: (1) using the time, facilities, proprietary information, or other resources of the Company; or (2) relating to the actual or reasonably anticipated business of the Company (collectively referred to as "Inventions"). I further acknowledge that all original works of authorship which are made by me (solely or jointly with others) within the scope of and during the period of my employment with the Company and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act. I understand and agree that the decision whether or not to commercialize or market any Invention is within the Company's sole discretion and for the Company's sole benefit and that no royalty will be due to me as a result of the Company's efforts to commercialize or market any such Invention.

C. *Inventions Assigned to the United States.* I agree to assign to the United States government all my right, title, and interest in and to any and all Inventions whenever such full title is required to be in the United States by a contract between the Company and the United States or any of its agencies.

D. *Maintenance of Records.* I agree to keep and maintain adequate and current written records of all Inventions during the term of my employment with the Company. The records will be in the form of notes, sketches, drawings, and any other format that may be specified by the Company. The records will be available to and remain the sole property of the Company at all times.

E. *Patent and Copyright Registrations.* I agree to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instrument or papers shall continue after the termination of this Agreement. All such actions requested by the Company shall be at the Company's sole expense. If the Company is unable because of my mental or physical incapacity or for any other reason to secure my signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering Inventions or original works of authorship assigned to the Company as above, then I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact, to act for and in my behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by me.

F. *Notice.* Employees in California, Delaware, Illinois, Kansas, Minnesota, North Carolina, Utah, and Washington are advised to refer to Exhibit B for additional information about the scope of the invention assignment provisions in this Section 3.

4. *Returning Company Documents.* I agree that, at the time of the termination of my employment, or earlier upon request of the Company, I will deliver to the Company (and will not keep in my possession, copy, recreate or deliver to anyone else) any and all Company property (including any and all devices and equipment), as well as any and all Company records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, other documents in any media or property, or reproductions of any aforementioned items developed or received by me pursuant to my employment with the Company or otherwise belonging to the Company, its successors or assigns, including, without limitation, those records

maintained pursuant to paragraph 3.D (**collectively “Company Records”**). After providing all such Company Records to the Company I will delete all digital copies from any computers, PDA’s, or other digital storage devices that do not belong to the Company and that I use or control. In the event of the termination of my employment, I agree to sign and deliver the "Termination Certification" attached hereto as Exhibit C. However, I understand and acknowledge that the Company's failure to require me to execute a Termination Certificate does not relieve me of my obligations and duties under this Agreement, which shall survive whether or not the Termination Certificate is executed and returned to the Company.

5. *Code of Conduct.* I agree to abide by the Company’s Code of Conduct, as it may be amended from time to time.

6. *Representations.* I agree to execute any proper oath or verify any proper document required to carry out the terms of this Agreement. I represent that my performance of all the terms of this Agreement will not breach any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my employment by the Company. I hereby represent and warrant that I have not entered into, and I will not enter into, any oral or written agreement in conflict herewith.

7. *Arbitration and Equitable Relief.*

A. *Arbitration.* In consideration of my employment with the Company, its promise to arbitrate all employment-related disputes and my receipt of the compensation, pay raises and other benefits paid to me by the Company, at present and in the future, the Company and I agree that any and all controversies, claims, or disputes with anyone (including the Company and any employee, officer, director, shareholder or non-ERISA benefit plan of the Company or the plan’s sponsors, fiduciaries, affiliates or agents in their capacity as such or otherwise) arising out of, relating to, or resulting from my employment with the Company or the termination of my employment with the Company, including any breach of this Agreement but excluding any issues related to the enforceability of this Agreement, shall be subject to binding arbitration under the arbitration rules set forth in the Employment Arbitration Rules of the American Arbitration Association (“AAA”) (the "Rules"). The Rules are available on line at the AAA’s web site: www.adr.org. The Rules also may be obtained upon request to the *NEWAsurion* Legal Department, 648 Grassmere Park, Suite 300, Nashville, Tennessee 37211.

Arbitration under this Agreement is governed by the Federal Arbitration Act (9 U.S.C. § 1 et seq.). Disputes which the Company and I agree to arbitrate, and thereby agree to waive any right to a trial by jury, include, but are not limited to, all statutory claims arising out of the employment relationship or its termination, including workplace discrimination claims, alleged violations of Title VII of the Civil Rights Act of 1964, sections 1981 through 1988 of Title 42 of the United States Code and all amendments thereto, the Employee Retirement Income Security Act of 1974 (“ERISA”), the Americans with Disabilities Act of 1990 (“ADA”), the Age Discrimination in Employment Act of 1967 (“ADEA”), the Older Workers Benefits Protection Act of 1990 (“OWBPA”), the Fair Labor Standards Act (“FLSA”), the Occupational Safety and

Health Act (“OSHA”), the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), and any and all claims under federal, state, and local laws and common law, but excluding worker’s compensation claims, state disability insurance claims and claims for unemployment benefits. I further understand that this agreement to arbitrate also applies to any disputes that the Company may have with me, including without limitation, claims for misappropriation of trade secrets and unfair competition.

Regardless of any other terms of this Agreement, claims may be brought before and remedies awarded by an administrative agency if applicable law permits access to such an agency notwithstanding the existence of an agreement to arbitrate. Such administrative claims include, without limitation, claims or charges brought before the Equal Employment Opportunity Commission, the U.S. Department of Labor, and the National Labor Relations Board. Nothing in this Agreement shall be deemed to preclude or excuse a party from bringing an administrative claim before any agency in order to fulfill the party's obligation to exhaust administrative remedies before making a claim in arbitration.

Disputes that may not be subject to predispute arbitration agreement as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) are excluded from the coverage of this agreement.

B. *Procedure.* The arbitration will be administered by the AAA, and the neutral arbitrator will be selected in a manner consistent with the Rules. The arbitrator shall have the power to decide any motions brought by any party to the arbitration, including motions for discovery, motions for summary judgment and/or adjudication and motions to dismiss and demurrers, prior to any arbitration hearing. The Arbitrator may award any party any remedy to which that party is entitled under applicable law, but such remedies shall be limited to those that would be available to a party in his or her individual capacity in a court of law for the claims presented to and decided by the Arbitrator, and no remedies that otherwise would be available to an individual in a court of law will be forfeited by virtue of this Agreement. The Company will pay for any administrative or hearing fees charged by the arbitrator or AAA. The arbitrator shall administer and conduct any arbitration in a manner consistent with the Rules. The decision of the arbitrator shall be in writing and state the essential findings of fact and conclusions of law.

C. *Remedy.* Except as provided by the Rules and this Agreement, arbitration shall be the sole, exclusive and final remedy for any dispute covered by this Agreement between me and the Company. Accordingly, except as provided for by the Rules and this Agreement, neither I nor the Company will be permitted to pursue court action regarding claims that are subject to arbitration.

D. *Class Action Waiver.* **Both the Company and I agree to bring any dispute in arbitration on an individual basis only, and not on a class, collective, representative or private attorney general basis. There will be no right or authority for any dispute to be brought, heard or arbitrated as a class, collective, representative or private attorney general action, or as a member in any purported class, collective, representative or private**

attorney general proceeding, including without limitation pending but not certified class actions (“Class Action Waiver”). Disputes regarding the validity and enforceability of the Class Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator.

In any case in which (1) the dispute is filed as a class, collective, representative or private attorney general action and (2) a civil court of competent jurisdiction finds all or part of the Class Action Waiver unenforceable, the class, collective, representative and/or private attorney general action must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration.

The Class Action Waiver, and any other provision of this Agreement, shall be severable in any case in which the dispute is filed as an individual action and severance is necessary to ensure that the individual action proceeds in arbitration.

Although employees will not be retaliated against, disciplined or threatened with discipline for exercising their rights under section 7 of the National Labor Relations Act by the filing of or participation in a class, collective, representative or private attorney general action, the Company may lawfully seek enforcement of this Agreement and the Class Action Waiver under the Federal Arbitration Act and seek dismissal of any such class, collective, representative and/or private attorney general action.

E. *Availability of Injunctive Relief.* In addition to the right under the Rules to petition the court for provisional relief, the Company and I agree that either party may also petition the court for temporary or preliminary injunctive relief in connection with an arbitrable controversy, but only upon the ground that the award to which that party may be entitled may be rendered ineffectual without such provisional relief. The Company and I understand that not having access to the court under such circumstances will cause irreparable injury and that money damages will not provide an adequate remedy, and therefore both parties hereby consent to this exercise of the court’s authority. The arbitrator shall have the exclusive authority to decide issues of permanent injunctive relief and monetary damages.

F. *Understanding of Agreement.* I further acknowledge and agree that I have carefully read this Agreement and that I have asked any questions needed for me to understand the terms, consequences and binding effect of this Agreement and fully understand it, including that the Company and I are **WAIVING THE RIGHT TO A JURY TRIAL**. Finally, I agree that I have been provided an opportunity to seek the advice of an attorney of my choice before signing this Agreement.

8. *General Provisions.*

A. *Governing Law; Consent to Personal Jurisdiction.* This Agreement will be governed by the laws of the state in which I last resided while employed by the Company. I hereby expressly consent to the personal jurisdiction of the state and federal courts located in

Davidson County, Tennessee for any lawsuit filed there against me by the Company arising from or relating to this Agreement.

B. *Defense of Claims.* I agree that for a period of two (2) years after termination of my employment, upon request from the Company, I will cooperate with the Company in the defense of any claims or actions that may be made by or against the Company that affect my prior areas of responsibility, except if my reasonable interests are adverse to the Company in such claim or action. The Company agrees to promptly reimburse me for all of my reasonable travel and other direct expenses incurred, or to be reasonably incurred, to comply with my obligations under this Section 8(B).

C. *Entire Agreement.* This Agreement sets forth the entire agreement and understanding between the Company and me relating to the subject matters herein and supersedes all prior discussions or representations between us on these subject matters including, but not limited to, any representations made during my interview(s) or relocation negotiations, whether written or oral. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the Chief Executive Officer of the Company (or his/her designee) and me. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

D. *Severability.* If one or more of the provisions in this Agreement are deemed void by law, then the remaining provisions will continue in full force and effect.

E. *Successors and Assigns.* This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors, and its assigns without the need for further action or agreement by me. Should I become employed by an Affiliate of the Company, the Affiliate shall step into the Company's shoes and all references to the Company in this Agreement shall apply to such Affiliate.

F. *Non-Assignability.* I shall not assign my rights and obligations under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Company, and any such assignment contrary to the terms hereof shall be null and void and of no force or effect.

G. *Section Headings.* Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

H. *No Waiver.* No delay or failure at any time on the part of the Company in exercising any right, power or privilege under this Agreement, or in enforcing any provisions of this Agreement, shall impair such right, power or privilege or be construed as a waiver of such

provision, or be construed as a waiver or default. Further, except pursuant to a written agreement of the parties hereunder, no action taken pursuant to this Agreement will be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement, and will not operate or be construed as a waiver or continuing waiver of any subsequent breach thereof, whether of a similar or dissimilar nature.

Date: 10/30/2020

Hector Chavez

Hector Chavez (Oct 30, 2020 13:53 EDT)

Signature

Hector Chavez

Name of Employee (typed or printed)

Exhibit A

**LIST OF PRIOR INVENTIONS
AND ORIGINAL WORKS OF AUTHORSHIP**

Title	Date	Identifying Number or Brief Description
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0 No inventions or improvements

0 Additional Sheets Attached

Signature of Employee: *Hector Chavez*
Hector Chavez (Oct 30, 2020 13:53 CDT)

Print Name of Employee: **Hector Chavez**

Date: **10/30/2020**

Exhibit B

NOTICE REGARDING INVENTION ASSIGNMENT

1. For an employee residing in **Delaware, Illinois, Kansas, or North Carolina**, you are hereby advised:

Notice. No provision in this Agreement requires you to assign any of your rights to an invention for which no equipment, supplies, facility, or trade secret information of the Company was used and which was developed entirely on your own time, unless (a) the invention relates (i) to the business of the Company or (ii) to the Company's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by you for the Company. Delaware Code Title 19 Section 805; Illinois 765ILCS1060/1-3, "Employees Patent Act"; Kansas Statutes Section 44-130; North Carolina General Statutes Article 10A, Chapter 66, Commerce and Business, Section 66-57.1.

2. For an employee residing in **Minnesota**, you are hereby advised:

Notice. No provision in this Agreement requires you to assign any of your rights to an invention for which no equipment, supplies, facility, or trade secret information of the Company was used and which was developed entirely on your own time, and (a) which does not relate (i) directly to the business of the Company, or (ii) to the Company's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by you for the Company. Minnesota Statutes 13A Section 181.78.

3. For an employee residing in **Utah**, you are hereby advised:

Notice. No provision in this Agreement requires you to assign any of your rights to an invention which was created entirely on your own time, and which is not (a) conceived, developed, reduced to practice, or created by you (i) within the scope of your employment with the Company, (ii) on the Company's time, or (iii) with the aid, assistance, or use of any of the Company's property, equipment, facilities, supplies, resources, or patents, trade secrets, know-how, technology, confidential information, ideas, copy rights, trademarks and service marks and any and all rights, applications and registrations relating to them, (b) the results of any work, services, or duties performed by you for the Company, (c) related to the industry or trade of the Company, or (d) related to the current or demonstrably anticipated business, research, or development of the Company. Utah Code Sections 34-39-1 through 34-39-3, "Employee Inventions Act."

4. For an employee residing in **Washington**, you are hereby advised:

Notice. No provision in this Agreement requires you to assign any of your rights to an invention for which no equipment, supplies, facility, or trade secret information of the Company was used and which was developed entirely on your own time, unless (a) the invention relates (i) directly to the business of the Company, or (ii) to the Company's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by you for the Company. Washington Rev. Code, Title 49 RCW: Labor Regulations Chapter 49.44.140.

5. For an employee residing in **California**, you are hereby advised:

Notice. No provision in this Agreement requires you to assign any of your rights to an invention if that invention qualifies for exclusion under California Labor Code §2870 which states: (a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer, (b) to the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable. Cal. Lab. Code §2870.

Exhibit C

TERMINATION CERTIFICATION

This is to certify that I do not have in my possession, nor have I failed to return, any Company Records (as defined by the Employment, Confidential Information, Invention Assignment and Arbitration Agreement signed by me) or any other property belonging to Asurion, LLC, National Electronics Warranty, LLC, and/or its and/or their parents, subsidiaries, affiliates, successors or assigns (together, the "Company"), including, without limitation, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions (in any media) of any aforementioned items.

I further certify that I have complied with all the terms of the Company's Employment, Confidential Information, Invention Assignment and Arbitration Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined therein), conceived or made by me (solely or jointly with others) covered by that Agreement.

I further agree that I will comply with all the terms of the Company's Employment, Confidential Information, Invention Assignment and Arbitration Agreement, including the provisions on the use and disclosure of Confidential Information, and that should I have any questions about the Agreement I will contact the Company's legal department.

Date: 10/30/2020

Hector Chavez

Hector Chavez (Oct 30, 2020 13:53 CDT)

(Employee's Signature)

Hector Chavez

(Type/Print Employee's Name)