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Attorneys for Plaintiff Floyd Johnson

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

Floyd Johnson, as a representative and aggrieved
employee pursuant to the Private Attorneys
General Act,

Plaintiff,

vs.

Field Nation, LLC, Mynul Khan, Chris Nichols,
Darren Gerke, Carl Hardel, and Does 1 through
10,

Defendants.

Plaintiff Floyd Johnson ("Plaintiff") alleges:

Electronically

FILED

by Superior Court of California, County of San Mateo

ON 8/12/2021

By /s/ Anthony Berini
Deputy Clerk

Case No. 21-CIV-04363

**Complaint for Recovery of Civil
Penalties pursuant to the California
Private Attorneys General Act**

Cause of Action No. 1
PAGA Claim for Civil Penalties
(Against All Defendants)

1. Plaintiff is a resident of California and was employed by Defendants in Alameda County, California.
2. One or more of the alleged violations set forth below was committed against Plaintiff, and Plaintiff is therefore an “aggrieved employee” under the definition contained in Labor Code Section 2699(c), which provides in relevant part:

(c) For purposes of this part, “aggrieved employee” means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.
3. Pursuant to the Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”), Plaintiff is entitled to recover civil penalties on behalf of himself and other persons who are or were employed by the alleged violators and against whom one or more of the alleged violations was committed (“PAGA Employees”).
4. The PAGA Employees include, but are not limited to, Plaintiff and all other persons who provided services to Defendants or to customers of Defendants in California during the applicable statute of limitations period, including without limitation all “Providers” that Defendants improperly classified as independent contractors.
5. Defendant Field Nation, LLC (“Field Nation”) is believed to be a Minnesota limited liability company with its entity address located at 733 Marquette Ave, Ste 800, Minneapolis MN 55402.
6. Mynul Khan, Chris Nichols, Darren Gerke, Carl Hardel are officers, agents, owners, managing agents, members and/or employees of Field Nation and are believed to be “employers” of Plaintiff and the PAGA Employees under California law. They are also believed to have violated or caused to be violated the statutes and/or Wage Order provisions set forth below.
7. Plaintiff does not presently know the true names and capacities of the defendants named as Does 1 through 10 and therefore sues such defendants by these fictitious names. Plaintiff believes that the Doe Defendants are persons or entities who are involved in the acts set forth below, either as

1 independent contractors, suppliers, agents, servants, or employees of the known Defendants or
2 through conspiring with the known Defendants to perform these acts for financial gain and profit
3 in violation of Plaintiff's and the PAGA Employees' rights. Plaintiff will request leave of the
4 Court to amend this Complaint to set forth their true names, identities, and capacities when
5 Plaintiff ascertains them.

6 8. Each of the Defendants has been or is the principal, officer, director, agent, employee,
7 representative, and/or co-conspirator of each of the other defendants and in such capacity or
8 capacities participated in the acts or conduct alleged herein and incurred liability therefor. At an
9 unknown time, some or all of the Defendants conspired with other of the Defendants to commit
10 the wrongful acts described herein. These wrongful acts were committed in furtherance of such
11 conspiracy. Defendants aided and abetted each other in committing the wrongful acts alleged
12 herein. Each of the Defendants acted for personal gain or in furtherance of their own financial
13 advantage in effecting the acts alleged herein.

14 9. The named Defendants and the Doe defendants are hereinafter collectively referred to as
15 "Defendants."

16 10. Defendants supply technicians such as Plaintiff and PAGA Employees to their customers and
17 Plaintiff and PAGA Employees provide services to Defendants' customers. Defendants
18 improperly classified Plaintiff and PAGA Employees as independent contractors rather than
19 employees.

20 11. Plaintiff and PAGA Employees are not free from the control and direction of Defendants in
21 connection with the performance of the work they perform, either under the contract for the
22 performance of the work or in fact.

23 12. Defendants exercised control over Plaintiff's and other PAGA Employees' wages, hours, and/or
24 working conditions in the following ways, *inter alia*:
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- 1 a. Defendants require Plaintiff and other PAGA Employees to apply for work through
2 Defendants' website. Plaintiff and other PAGA Employees apply for work by accepting
3 Defendants' customers ("Buyers") work orders that Defendants posted on their website.
4 b. Defendants require that any money paid by Buyers for Providers' services be paid
5 directly to Defendants.
6 c. Defendants deduct certain amounts (including, but not limited to, a 10% fee) before
7 paying the remaining portion to the Providers.
8 d. Defendants also charge many Providers for insurance, background checks, and drug tests.
9 e. Defendants require Providers to provide any items needed and to pay all expenses the
10 Providers incur to complete an order, such as a laptops, phones, and transportation.
11 f. Defendants require Providers to provide and/or pay for workers compensation and other
12 forms of insurance (*e.g.*, general liability insurance).
13 g. Defendants have the right to withhold a Provider's payment until "the Provider resolves
14 any disputes with a Buyer," and makes the Provider responsible for a Buyer's "refund or
15 warranty claims."
16 h. Defendants, rather than a Buyer, issues a 1099 tax form to each Provider.
17 i. Defendants directed Providers how they were to perform services while working at the
18 Buyers' locations. For example, Defendants required Providers to:
19 • refrain from "abandoning a job before completion;"
20 • refrain from not showing up for work "without attempting to notify the client absent
21 emergency circumstances;"
22 • "properly complete a work order's scope of work;"
23 • refrain from violating "the specific terms of a Buyer's work order;"
24 • ensure that they "return parts;"
25 • refrain from the "careless packaging of returned parts;"
26 • comply with "state or federal laws and regulations, such as OSHA;"
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- refrain from applying for jobs on Defendants’ website which are “outside of the service provider’s skill set or qualifications;”
- refrain from obtaining work from a Buyer other than through Defendants’ website;
- refrain from sending someone to a Buyer’s location who does not have a registered “profile” with Field Nation;
- refrain from using “persistent foul/offensive/intimidating language” with a Buyer, a Buyer’s customers, and/or Field Nation staff;
- buy and/or provide workers compensation and other forms of insurance;
- comply with COVID restrictions while working at a Buyer’s location;
- refrain from being “under the influence” while at a Buyer’s location;
- refrain from engaging in sexual harassment, discrimination, and “unethical behavior.”

13. According to Defendants’ written “Provider Quality Assurance Policy,” Defendants maintain a “team of Quality Assurance Experts” to enforce the foregoing rules and which has the power, among other things, to suspend and/or deactivate the account of any Provider who violates such rules.

14. According to Defendants’ written “Provider Terms and Conditions” (“PTC”), Defendants maintain what amounts to an “at-will” relationship with Providers. Defendants reserve the power to terminate Providers. For example, the PTC provides that “Field Nation reserves the right to suspend or terminate Provider’s access to the Platform in order to protect Field Nation’s rights and interests.”

15. The PTC also provides that Field Nation also has the right “to terminate [a Provider’s] work” if “the Provider violates the terms of this [PTC] or fails to produce a result that meets the specifications of the [PTC].” Upon such termination, the PTC states that a “Provider will not be relieved of the obligation to pay any fees due to Field Nation which accrued before the termination date.”

- 1 16. Defendants, on the other hand, only have “to provide the Provider with tax reports or Work
2 Order payment information.” The PTC purports to limit Defendants’ financial obligations to a
3 Provider to either \$2,500 or the value of six months of completed work orders, whichever is less.
4 17. The Providers’ work is integral to and within the usual course of Defendants’ business.
5 18. For the reasons stated above, among others, Defendants were the employers of Plaintiff and other
6 PAGA Employees and are therefore responsible and liable for all wage and hourly violations,
7 working condition violations, and other wrongs that have been perpetrated against Plaintiff and
8 other PAGA Employees.

9 **Defendants misclassified Plaintiff and other PAGA Employees as independent contractors.**

- 10 19. California Labor Code Section 226.8 in relevant part provides:
11 (a) It is unlawful for any person or employer to engage in any of the following activities:
12 (1) Willful misclassification of an individual as an independent contractor.
13 (2) Charging an individual who has been willfully misclassified as an independent
14 contractor a fee, or making any deductions from compensation, for any purpose,
15 including for goods, materials, space rental, services, government licenses, repairs,
16 equipment maintenance, or fines arising from the individual’s employment where any of
the acts described in this paragraph would have violated the law if the individual had not
been misclassified.
17 20. Defendants violated Labor Code Section 226.8(a) by intentionally misclassifying Plaintiff and
18 other PAGA Employees as independent contractors rather than as employees to avoid
19 Defendants’ obligations under California labor laws.
20 21. Defendants’ charged Plaintiff and other PAGA Employees for various amounts, including:
21 • a 10% “Field Nation Service Fee;”
22 • a 3.9% “Field Nation Pro” fee (for which a Provider would receive certain benefits,
23 including the cost of one background check and drug test each year);
24 • a 1.5% charge for “General Liability Insurance;” and
25 • a .5% charge for “Occupational Accident Insurance.”
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Defendants failed to provide written notice to Plaintiff and other PAGA Employees in accordance with Labor Code 2810.5.

22. Labor Code Section 2810.5, in relevant part provides:

(a) (1) At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(C) The regular payday designated by the employer in accordance with the requirements of this code.

(D) The name of the employer, including any "doing business as" names used by the employer.

(E) The physical address of the employer's main office or principal place of business, and a mailing address, if different.

(F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer's workers' compensation insurance carrier.

(H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

(I) Any other information the Labor Commissioner deems material and necessary.

(2) The Labor Commissioner shall prepare a template that complies with the requirements of paragraph (1). The template shall be made available to employers in such manner as determined by the Labor Commissioner.

(3) If the employer is a temporary services employer, as defined in Section 201.3, the notice described in paragraph (1) must also include the name, the physical address of the main office, the mailing address if different from the physical address of the main office, and the telephone number of the legal entity for whom the employee will perform work, and any other information the Labor Commissioner deems material and necessary. The requirements of this paragraph do not apply to a security services company that is licensed by the Department of Consumer Affairs and that solely provides security services.

(b) An employer shall notify his or her employees in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies:

(1) All changes are reflected on a timely wage statement furnished in accordance with Section 226.

(2) Notice of all changes is provided in another writing required by law within seven days of the changes.

23. Defendants violated California Labor Code 2810.5 by failing to provide Plaintiff and other PAGA Employees with written notice of: the rate or rates of pay and basis thereof; the physical address of the employer's main office or principal place of business, and a mailing address, if different; the telephone number of the employer; the name, address, and telephone number of the employer's workers' compensation insurance carrier; or that an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

Defendants failed to compensate Plaintiff and other PAGA Employees for all hours worked.

24. Labor Code Section 1197 in relevant part provides:

The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

25. Labor Code Section 1182.12 in relevant part provides:

(a) Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.

26. Paragraph 4 of the applicable Wage Order provides in relevant part:

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage **for all hours** worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise. (Emphasis added.)

27. Defendants failed to pay Plaintiff and other PAGA Employees for all hours worked at the proper rates. Defendants did not pay the wages owing at the proper rate for travel time and time spent working for Defendants' customers.

Defendants failed to compensate Plaintiff and other PAGA Employees for all overtime hours worked at the proper rate.

28. Labor Code Section 510 provides in relevant part:

(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

29. Paragraph 3(A) of the applicable Wage Order provides in relevant part:

3. HOURS AND DAYS OF WORK

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

30. PAGA Employees worked more than eight hours per day and/or more than 40 hours per week but were not paid all the overtime wages due them at the proper rates.

Defendants improperly deducted money from Plaintiff and PAGA Employees' wages.

31. Labor Code Section 221 provides: "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."
32. Defendants deducted fees and other amounts from the wages of Plaintiff and other PAGA Employees. The deductions included, but were not limited to, a 10% "Field Nation Service Fee," a 3.9% "Field Nation Pro" fee (for which a Provider would receive certain benefits, including the cost of one background check and drug test each year), a 1.5% charge for "General Liability Insurance," and a .5% charge for "Occupational Accident Insurance."

Defendants violated Defendants' meal period obligations.

33. California Labor Code Section 512 provides in relevant part:
- (a) An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
34. California Labor Code Section 226.7 provides in relevant part:
- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

35. Paragraph 11 of the applicable Wage Order provides in relevant part:
- Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) 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.

36. Defendants failed to provide Plaintiff and other PAGA Employees with the required timely, duty-free meal periods because it treated them as independent contractors rather than employees.

37. Defendants failed to pay Plaintiff and other PAGA Employees the compensation due them pursuant to Labor Code Section 226.7 and the applicable Wage Order.

Defendants violated Defendants' rest period obligations.

38. Labor Code Section 226.7 provides:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

39. Paragraph 12 of the applicable Wage Order provides in relevant part:

REST PERIODS

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half

(3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest 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 rest period is not provided.

40. Even though Plaintiff and other PAGA Employees worked periods greater than three and one-half hours but less than four hours, periods greater than six hours but less than eight hours, and/or periods greater than 10 hours, Defendants did not provide Plaintiff and other PAGA Employees with all legally required rest periods to which they were entitled because it treated them as independent contractors rather than employees.

41. Defendants failed to pay Plaintiff and other PAGA Employees the compensation due them pursuant to Labor Code Section 226.7 and the applicable Wage Order.

Defendants violated Labor Code Section 2802.

42. Labor Code Section 2802 in relevant part provides:

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

(b) All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

(c) For purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section...

43. Paragraph 9 of the applicable Wage Order provides in relevant part:

9. UNIFORMS AND EQUIPMENT

...

(B)When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft...

1 44. Defendants required Plaintiff and other PAGA Employees to pay for business expenses that were
2 Defendants' responsibility. For example, Defendants required Plaintiff and other PAGA
3 Employees to provide and/or pay for workers compensation and other forms of insurance.
4 Defendants also failed to reimburse Plaintiff and other PAGA Employees for travel expenses.
5 Defendants also required Plaintiff and other PAGA Employees to use their own tools and
6 equipment, to pay for their phones and associated service and/or data plans, and to pay for
7 background checks and drug tests.

8 **Defendants violated Labor Code Section 204.**

9 45. Labor Code Section 204 provides in relevant part:

10 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2,
11 earned by any person in any employment are due and payable twice during each calendar
12 month, on days designated in advance by the employer as the regular paydays. Labor
13 performed between the 1st and 15th days, inclusive, of any calendar month shall be paid
14 for between the 16th and the 26th day of the month during which the labor was
performed, and labor performed between the 16th and the last day, inclusive, of any
calendar month, shall be paid for between the 1st and 10th day of the following month.

15 46. Defendants did not pay Plaintiff and other PAGA Employees the wages owing them in the time
16 required by Section 204. For example, Defendants refused to pay Plaintiff and other PAGA
17 Employees until Defendants received payment from the Buyers, which could be longer than the
18 period prescribed by Section 204. Defendants also refused to pay if Defendants and/or Buyers
19 were dissatisfied with any of the Providers' services.

20 **Defendants violated Labor Code Sections 201 and 202 by failing to pay Plaintiff and other PAGA**
21 **Employees all wages earned and unpaid at the time of the termination of their employment.**

22 47. Labor Code Section 201 provides:

23 If an employer discharges an employee, the wages earned and unpaid at the time of
discharge are due and payable immediately...

24 48. Labor Code Section 202 provides:

25 If an employee not having a written contract for a definite period quits his or her
26 employment, his or her wages shall become due and payable not later than 72 hours
27 thereafter, unless the employee has given 72 hours previous notice of his or her intention
28 to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Notwithstanding any other law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting

49. Defendants violated Section 201 as to Plaintiff and other PAGA Employees whose specific jobs ended or who were discharged by willfully failing to timely pay the wages earned and unpaid upon the conclusion of the specific jobs and/or termination of their employment, including unpaid wages for regular hours worked, unpaid overtime, unpaid meal premiums and/or unpaid rest period premiums.

50. Defendant violated Section 202 as to PAGA Employees who quit by willfully failing to timely pay the wages earned and unpaid upon the termination of their employment, including unpaid wages for regular hours worked, unpaid overtime, unpaid meal premiums and/or unpaid rest period premiums.

Defendant violated Labor Code Section 203 by failing to pay Plaintiff and other PAGA Employees the wages owing pursuant to Labor Code Sections 201 and 202.

51. Labor Code Section 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections **201**, 201.3, 201.5, 201.9, **202**, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment. (Emphasis added).

52. Defendants violated Section 203 as to Plaintiff and other PAGA Employees by willfully failing to pay the wages owing to them under Section 201 or 202.

Defendants violated Defendants' obligations under Labor Code Section 226(a).

53. Defendants violated Section 226(a)(1) as to Plaintiff and other PAGA Employees by failing to provide them statements of wages that accurately showed gross wages actually earned, including

wages for regular hours worked, overtime hours worked, missed meal periods and/or missed rest periods.

54. Defendants violated Section 226(a)(2) by failing to provide Plaintiff and other PAGA Employees statements of wages that accurately showed the total hours worked by Plaintiff and other PAGA Employees.

55. Defendants violated Section 226(a)(3) by failing to provide Plaintiff and other PAGA Employees statements of wages that accurately showed the number of piece-rate units earned and any applicable piece rate to the extent they were paid on a piece-rate basis.

56. Defendants violated Section 226(a)(4) by failing to provide Plaintiff and other PAGA Employees statements of wages that accurately showed all deductions.

57. Defendants violated Section 226(a)(5) by failing to provide Plaintiff and other PAGA Employees with statements of wages that accurately showed net wages earned, including net wages earned for regular hours worked, overtime hours worked, meal period wages, and/or rest period wages.

58. Defendants violated Section 226(a)(6) by failing to provide Plaintiff and other PAGA Employees with statements of wages that accurately showed the inclusive dates of the period for which they were paid.

59. Defendants violated Section 226(a)(7) by failing to provide Plaintiff and other PAGA Employees with statements of wages that accurately showed the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

60. Defendants violated Section 226(a)(8) by failing to provide Plaintiff and other PAGA Employees with statements of wages that accurately showed the name and address of the legal entity that is the employer.

61. Defendants violated Section 226(a)(9) by failing to provide Plaintiff and other PAGA Employees with statements of wages that accurately showed the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by failing to

1 accurately show the actual number of regular hours worked at the applicable hourly rate, failing
2 to accurately show the actual overtime hours worked at the applicable overtime hourly rate,
3 and/or failing to accurately show the meal and/or rest period premium hours and the applicable
4 hourly rate at which such hours were to be paid.

5 **Defendants violated Labor Code Section 1174 and applicable sections of the applicable Wage**
6 **Order regarding recordkeeping.**

7 62. California Labor Code Section 1174 provides in relevant part:

8 Every person employing labor in this state shall:

9 . . . (d) Keep, at a central location in the state or at the plants or establishments at which
10 employees are employed, payroll records showing the hours worked daily by and the
11 wages paid to, and the number of piece-rate units earned by and any applicable piece rate
12 paid to, employees employed at the respective plants or establishments. These records
13 shall be kept in accordance with rules established for this purpose by the commission, but
in any case shall be kept on file for not less than three years. An employer shall not
prohibit an employee from maintaining a personal record of hours worked, or, if paid on
a piece-rate basis, piece-rate units earned.

14 63. Section 1174.5 provides:

15 Any person employing labor who willfully fails to maintain the records required by
16 subdivision (c) of Section 1174 or accurate and complete records required by subdivision
17 (d) of Section 1174, or to allow any member of the commission or employees of the
division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to
a civil penalty of five hundred dollars (\$500).

18 64. Section 7 of the applicable Wage Order provides in relevant part:

19 7. RECORDS

20 (A) Every employer shall keep accurate information with respect to each employee
21 including the following:

22 (1) Full name, home address, occupation and social security number.

23 (2) Birth date, if under 18 years, and designation as a minor.

24 (3) Time records showing when the employee begins and ends each work period. Meal
25 periods, split shift intervals and total daily hours worked shall also be recorded. Meal
periods during which operations cease and authorized rest periods need not be recorded.

26 (4) Total wages paid each payroll period, including value of board, lodging, or other
compensation actually furnished to the employee.

27 (5) Total hours worked in the payroll period and applicable rates of pay. This information
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shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request...

65. Defendants failed to keep payroll records showing the hours worked daily by and the wages paid to, and/or the number of piece-rate units earned by and any applicable piece rate paid to Plaintiff and other PAGA Employees. Defendants failed to keep accurate information as to the following with respect to Plaintiff and other PAGA Plaintiffs:

- the full name, home address, occupation and social security number;
- time records showing when the employee begins and ends each work period and meal periods, split shift intervals and total daily hours worked;
- total wages paid each payroll period, including the value of board, lodging, or other compensation actually furnished to the employee;
- total hours worked in the payroll period and applicable rates of pay;
- piece rates or an explanation of any incentive plan formula;
- an accurate production record.

66. Labor Code Section 2699(g) provides that any "employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Plaintiff has incurred attorneys' fees and costs in pursuing this claim.

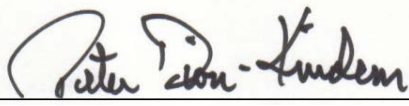
1 67. On August 11, 2021, Plaintiff's attorney gave written notice to the Labor and Workforce
2 Development Agency ("LWDA") and to the Defendants by certified mail identifying violations
3 set forth in this complaint. Once 65 days have passed from the date of the mailing of the notice,
4 Plaintiff will file an amended complaint alleging Plaintiff's compliance with the notice
5 requirements.

6 WHEREFORE, Plaintiff requests that an award be entered against Defendants as follows:

- 7 1. For all civil penalties recoverable under the PAGA;
8 2. For attorneys' fees and costs as allowed by law;
9 3. For prejudgment interest;
10 4. For such other and further relief as the Court deems proper.

11 Dated: August 12, 2021

THE DION-KINDEM LAW FIRM

12
13 BY: 

PETER R. DION-KINDEM, P.C.

PETER R. DION-KINDEM

Attorney for Plaintiff Floyd Johnson