

Electronically FILED by Superior Court of California, County of Los Angeles on 01/18/2022 01:56 AM Sherri R. Carter, Executive Officer/Clerk of Court, by R. Perez, Deputy Clerk

RUBEN ESCOBEDO (SBN 277866)
 WORKWORLD LAW CORP.
 A Professional Corporation
 731 S. Lincoln Street
 Santa Maria, CA 93458
 Telephone: (805) 335-2476
 Facsimile: (805) 892-6213
 Email: ruben@workworldlaw.com

Attorney for CHRISTOPHER MCGILL,
 as Private Attorney General

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

STATE OF CALIFORNIA ex rel.
 CHRISTOPHER MCGILL, as Private
 Attorney General,

Plaintiff,

v.

SAMEDAY TECHNOLOGIES INC.;
 PRAESIDIUM DIAGNOSTICS LLC;
 FELIX HUETTENBACH; and DOES 1-
 25, inclusive,

Defendants.

Case No. **22STCV01917**

Assigned for All Purposes to:

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

Trial Date: None

Complaint filed:

COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. CHRISTOPHER MCGILL as Private Attorney General (“Plaintiff”), who asserts claims against SAMEDAY TECHNOLOGIES INC., PRAESIDIUM DIAGNOSTICS LLC, FELIX HUETTENBACH, and DOES 1-25, inclusive (collectively “Defendants” or “Employer”) as follows:

INTRODUCTION

1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of himself, approximately 100 site managers (and those with similar titles and duties) employed by Employer in California between

1 December 11, 2020, through the resolution of this action (“Statutory Period”), and the People of
2 the State of California (hereinafter collectively “Employees”) against Employer.

3 2. Employer committed and/or is responsible for the following conduct alleged herein
4 below as employer, joint employer, “other person acting on behalf of an employer[s]” (Lab. Code,
5 §§ 558 and 558.1), and/or “other person acting either individually or as an officer, agent, or
6 employee of another person who pays or causes to be paid to any employee a wage less than the
7 minimum fixed by an applicable state or local law” (Lab. Code, § 1197.1). Likewise, Employer is
8 liable, jointly and severally, for all of the conduct alleged herein below. Every reference to
9 “Employer” below includes each of them individually and also collectively as if each of the
10 Defendants were separately specified at each reference.

11 3. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code,
12 permits an aggrieved employee to recover civil penalties set forth within the California Labor
13 Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil
14 penalties for violations of California Labor Code provisions that do not contain their own civil
15 penalties. Employees bring this civil action to recover civil penalties for the violations identified
16 below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil
17 penalties specifically set forth within the text of the California Labor Code. Those civil penalties
18 are sought for violations committed against Employees of Employer.

19 4. Plaintiff has exhausted or will exhaust all applicable administrative procedures
20 with the California Labor and Workforce Development Agency (“LWDA”) providing notice of his
21 intent to bring a private attorneys general action for recovery of penalties under the PAGA. To the
22 extent any violations were curable, Employer failed to cure within the time prescribed by law.

23 **JURISDICTION AND VENUE**

24 5. This Court has jurisdiction over this action pursuant to the California Constitution,
25 Article VI, §10.

26 6. Venue is proper in this Court because this action arises from work performed in
27 Los Angeles County.

PARTIES

7. For all times relevant herein, CHRISTOPHER MCGILL was an adult individual residing in the State of California. Mr. McGill is not suing in his individual capacity; he is proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved employees, including himself and other aggrieved employees.

8. For all times relevant herein, Plaintiff is informed and believes, and on that basis alleges, that Defendant SAMEDAY TECHNOLOGIES INC. was and is a business entity doing business and employing Employees in Los Angeles County, California, among other locations.

9. For all times relevant herein, Plaintiff is informed and believes, and on that basis alleges, that Defendant PRAESIDIUM DIAGNOSTICS LLC was and is a business entity doing business and employing Employees in Los Angeles County, California, among other locations.

10. For all times relevant herein, Plaintiff is informed and believes, and on that basis alleges, that Defendant FELIX HUETTENBACH was and is an individual residing in Los Angeles County, California.

11. Whenever in this Complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of its agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the business and affairs of Defendants.

12. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiff will amend this Complaint to insert the true names and capacities of the Doe Defendants at such time as the identities of the Doe Defendants are ascertained.

13. Plaintiff is informed and believes, and based thereon alleges, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and

1 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
2 to the extent of the liability of Defendants as alleged herein.

3 14. Plaintiff is further informed and believe, and thereon allege, that at all times herein
4 material, each Defendant was completely dominated and controlled by its co-Defendant(s) and
5 each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to
6 any conduct by Defendants, or any of them, such allegations and references shall also be deemed
7 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
8 Whenever and wherever reference is made to individuals who are not named as defendants in this
9 Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times
10 acted on behalf of Defendants named in this Complaint within the scope of their respective
11 employment or agency with Defendants.

12 **FACTS COMMON TO ALL COUNTS**

13 15. Christopher McGill began working for Employer on or about October 25, 2020.
14 His duties as a site manager included primarily non-exempt tasks, client management, site
15 management, scheduling, inventory, and payroll. Although the approximately 100 site managers
16 throughout California were unquestionably employees under settled California law, the Employer
17 misclassified them as independent contractors through 2020.

18 16. In or around January 2021, the Employer reclassified the site managers as
19 employees, but still misclassified them as exempt from overtime and break laws. The Employer
20 paid Mr. McGill and other site managers based on an unrealistic 40-hour workweek assumption;
21 in reality, to do the job correctly, they were required to spend 40-60 hours of work per week
22 without payment of required wages at the applicable minimum, overtime, and double overtime
23 rates. On several occasions, the Employer also failed to pay site managers on time and at the
24 correct wage rates.

25 17. The Employer also violated the law by failing to properly pay bonuses promised to
26 the employees. In sum, the Employer promised “points” to employees based primarily on the
27 volume of revenue the employees generated. The Employer promised the Employees payment of
28 bonuses on a monthly or quarterly basis, but failed to do so in a timely manner and at the correct

1 bonus rates. The Employer also arbitrarily changed the bonus structure as it saw fit, with no
2 explanation to the employees, and unlawfully deducted amounts from the employees' bonuses
3 earned. The Employer admitted that its system failed to accurately track bonus points and
4 eligibility, and consequently failed to accurately pay the site managers. Under the applicable IWC
5 Wage Order, "[w]hen a[n] incentive plan is in operation, ... an explanation of the incentive plan
6 formula shall be provided to employees. An accurate production record shall be maintained by the
7 employer." Employer failed to provide the required explanation of the incentive plan formula to
8 employees and also failed to keep an accurate production record to ensure employees were
9 properly paid for their labor, as promised. The Employer further violated the law by altering and
10 reducing the bonus formula to cut the site managers' bonus after it had been earned. To make
11 matters worse, although bonus payments had been earned and were scheduled to be paid, the
12 Employer unlawfully declared that the site managers had forfeited their bonuses if they were
13 separated before the bonuses were paid.

14 18. Employer also promised to pay site managers a stipend to cover their cell phones or
15 a percentage thereof. The company was well aware that its business operations depended on site
16 managers using their personal cell phones. The Employer required the site managers to use their
17 personal cell phones to perform their job duties. The Employer failed to pay the site managers the
18 promised stipend.

19 19. As a result of the foregoing, the Employer also failed to issue accurate wage
20 statements, failed to pay the site managers all bonuses earned in a timely manner within the
21 correct pay period for which they were earned, and failed to pay the site managers in a timely
22 manner at or near the time of their separation of employment.

23 **FIRST COUNT**

24 **Misclassification of Employees**

25 **(By Plaintiff against All Defendants)**

26 20. Plaintiff incorporates by reference and realleges each and every allegation
27 contained above, as though fully set forth herein.

1 21. Pursuant to Labor Code section 226.8: “(a) It is unlawful for any person or
2 employer to engage in any of the following activities: (1) Willful misclassification of an
3 individual as an independent contractor. ... (b) If the Labor and Workforce Development Agency
4 or a court issues a determination that a person or employer has engaged in any of the enumerated
5 violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less
6 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each
7 violation, in addition to any other penalties or fines permitted by law. (c) If the Labor and
8 Workforce Development Agency or a court issues a determination that a person or employer has
9 engaged in any of the enumerated violations of subdivision (a) and the person or employer has
10 engaged in or is engaging in a pattern or practice of these violations, the person or employer shall
11 be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than
12 twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or
13 fines permitted by law.”

14 22. The law presumes “all workers to be employees, and permits workers to be
15 classified as independent contractors only if the hiring business demonstrates that the worker in
16 question satisfies each of three conditions: (a) that the worker is free from the control and direction
17 of the hirer in connection with the performance of the work, both under the contract for the
18 performance of the work and in fact; and (b) that the worker performs work that is outside the
19 usual course of the hiring entity's business; and (c) that the worker is customarily engaged in an
20 independently established trade, occupation, or business of the same nature as that involved in the
21 work performed.” *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 955-
22 956 (emphasis omitted).

23 23. Prior to January 2021, Employer required Employees to conduct Employer’s
24 business operations under the guise of a fraudulent independent contractor scheme. Employer
25 unlawfully shifted its risk and business expenses to Employees, who were required to be paid
26 regular wages and overtime wages based on the amount of hours worked, rather than Employer’s
27 business outcomes.

28

24. Employer recruited Employees to work for Employer. Employer regularly directed Employees' work. Employees were classic production-level workers within the core of Employer's business (health screening). Employees were not engaged in any independently established trade, occupation, or business. Employees managed Employer's clients, sites, scheduling, inventory, and payroll, at Employer's direction, and for Employer's benefit, under the banner of Employer's business.

25. This was not accidental. Employer willfully classified its Employees as independent contractors. Employer engaged in a pattern or practice of these violations, and is subject to civil penalties as a result.

SECOND COUNT

Failure to Pay for All Hours Worked

(By Plaintiff against All Defendants)

26. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

27. Section 1197 provides that “[t]he 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.” “[O]n and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.” Cal. Lab. Code, § 1182.12, subd. (a). “[T]he minimum wage for all industries shall not be less than the amounts set forth in this subdivision (1) For any employer who employs 26 or more employees, the minimum wage shall be as follows: (A) From January 1, 2017, to December 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to December 31, 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.” Cal. Lab. Code, § 1182.12, subd. (b).

28. "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for

1 employees. The employment of any employee for longer hours than those fixed by the order or
2 under conditions of labor prohibited by the order is unlawful.” Cal. Lab. Code, § 1198.

3 29. Pursuant to the applicable Industrial Welfare Commission Wage Order,
4 employees “shall not be employed more than eight (8) hours in any workday or more than 40
5 hours in any workweek unless the employee receives one and one-half (1 1/2) times such
6 employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8)
7 hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or
8 more than six (6) days in any workweek is permissible provided the employee is compensated for
9 such overtime at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of
10 pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday,
11 and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a
12 workweek; and (b) Double the employee's regular rate of pay for all hours worked in excess of 12
13 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th)
14 consecutive day of work in a workweek. (c) The overtime rate of compensation required to be paid
15 to a nonexempt full-time salaried employee shall be computed by using the employee's regular
16 hourly salary as one-fortieth (1/40) of the employee's weekly salary.”

17 30. “Any employer or other person acting on behalf of an employer who violates, or
18 causes to be violated, a section of this chapter or any provision regulating hours and days of work
19 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
20 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
21 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
22 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
23 employee for each pay period for which the employee was underpaid in addition to an amount
24 sufficient to recover underpaid wages.” Cal. Lab. Code, § 558, subd. (a).

25 31. Throughout the Statutory Period, the Employer paid Employees based on an
26 unrealistic 40-hour workweek assumption; in reality, to do the job correctly, they were required to
27 spend 40-60 hours of work per week without payment of required wages at the applicable
28

1 minimum, overtime, and double overtime wage rates. Employer paid zero dollars for these hours
2 and is subject to civil penalties as a result.

3 **THIRD COUNT**

4 **Failure to Provide Compliant Meal and Rest Periods**

5 **(By Plaintiff against All Defendants)**

6 32. Plaintiff incorporates by reference and realleges each and every allegation
7 contained above, as though fully set forth herein.

8 33. “An employer may not employ an employee for a work period of more than five
9 hours per day without providing the employee with a meal period of not less than 30 minutes,
10 except that if the total work period per day of the employee is no more than six hours, the meal
11 period may be waived by mutual consent of both the employer and employee. An employer may
12 not employ an employee for a work period of more than 10 hours per day without providing the
13 employee with a second meal period of not less than 30 minutes, except that if the total hours
14 worked is no more than 12 hours, the second meal period may be waived by mutual consent of the
15 employer and the employee only if the first meal period was not waived.” Cal. Lab. Code, § 512,
16 subd. (a). Pursuant to Labor Code sections 226.7 and 512, and the applicable Wage Order, duty-
17 free meal periods of no less than thirty (30) minutes are required for all non-exempt employees
18 who work at least five (5) hours in a work period per day. The employee must be free to leave the
19 employer’s premises. An employer may not employ an employee for a work period of more than
20 10 hours per day without providing the employee with a second meal period of not less than 30
21 minutes. Time records of meal periods must be kept. Meal periods must be paid when the
22 employee is not relieved of all duties or free to leave the premises. An employer who fails to
23 provide a duty-free meal period must pay the employee an additional one (1) hour regular pay for
24 each day in which a duty-free meal period is not provided.

25 34. Pursuant to the applicable Industrial Welfare Commission Wage Order,
26 employers must provide non-exempt employees a ten (10) minute duty-free rest period for every
27 four (4) hours worked or major fraction thereof. Duty-free rest periods must be paid. An
28 employer who fails to provide a duty-free rest period must pay the employee an additional one (1)

1 hour of regular pay for each day in which a duty-free rest period is not provided. Cal. Lab. Code,
2 § 226.7, subd. (c).

3 35. Throughout the Statutory Period, as a result of the misclassification, Employer
4 maintained an illegal practice of not providing Employees with any sanctioned rest periods. Thus,
5 Employees were not provided a first, second, and third rest period, as required by law. Moreover,
6 although Employees were entitled to a meal period within the first five (5) hours of work,
7 Employer provided no meal periods to Employees. Employer also failed to provide a second meal
8 period for hours worked in excess of 10 hours each workday. Employer is subject to additional
9 civil penalties as a result.

10 **FOURTH COUNT**

11 **Inaccurate Wage Statements**

12 **(By Plaintiff against All Defendants)**

13 36. Plaintiff incorporates by reference and realleges each and every allegation
14 contained above, as though fully set forth herein.

15 37. “Every employer shall, semimonthly or at the time of each payment of wages,
16 furnish each of his or her employees, either as a detachable part of the check, draft, or voucher
17 paying the employee s wages, or separately when wages are paid by personal check or cash, an
18 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
19 the employee, except for any employee whose compensation is solely based on a salary and who is
20 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
21 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
22 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
23 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
24 net wages earned, ... (7) the name of the employee and only the last four digits of his or her social
25 security number or an employee identification number other than a social security number, ..., and
26 (9) all applicable hourly rates in effect during the pay period and the corresponding number of
27 hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
28

1 temporary services employer as defined in Section 201.3, the rate of pay and the total hours
2 worked for each temporary services assignment.” Cal. Lab. Code, § 226, subd. (a).

3 38. Throughout the Statutory Period, Employer failed to furnish Employees with
4 accurate itemized statements at the time of each payment of wages showing the correct gross
5 wages earned (including bonus wages), correct total hours worked, correct net wages earned, and
6 the corresponding correct number of hours worked at each applicable hourly rate. Rather than
7 providing statements of actual time worked and a correct payment of wages based thereon,
8 Employer failed to capture and pay Employees for all also worked including hours worked in
9 excess of the 40-hour workweek, and also failed to capture and pay premium pay for missed meal
10 and rest periods. Consequently, Employer failed to provide Employees accurate itemized wages
11 statements as required by Section 226.

12 **FIFTH COUNT**

13 **Untimely Payment of Wages**

14 **(By Plaintiff against All Defendants)**

15 39. Plaintiff incorporates by reference and realleges each and every allegation
16 contained above, as though fully set forth herein.

17 40. Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202,
18 204.1, or 204.2, earned by any person in any employment are due and payable twice during each
19 calendar month, on days designated in advance by the employer as the regular paydays. Labor
20 performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
21 between the 16th and the 26th day of the month during which the labor was performed, and labor
22 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
23 between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

24 41. Generally, “[l]abor performed by a weekly-paid employee during any calendar
25 week and prior to or on the regular payday shall be paid for not later than the regular payday of the
26 employer for such weekly-paid employee falling during the following calendar week. Labor
27 performed by a weekly-paid employee during any calendar week and subsequent to the regular
28

1 payday shall be paid for not later than seven days after the regular payday of the employer for such
2 weekly-paid employee falling during the following calendar week.” Cal. Lab. Code, § 204b.

3 42. Rather than timely paying Employees all wages due within the periods set forth
4 above, throughout the Statutory Period, Employer failed to timely pay Employees for all bonuses
5 earned, all hours worked, and all premium wages.

6 **SIXTH COUNT**

7 **Failure to Pay Wages at Termination**

8 **(By Plaintiff against All Defendants)**

9 43. Plaintiff incorporates by reference and realleges each and every allegation
10 contained above, as though fully set forth herein.

11 44. “If an employer discharges an employee, the wages earned and unpaid at the
12 time of discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (a). “If an
13 employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201,
14 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits,
15 the wages of the employee shall continue as a penalty from the due date thereof at the same rate
16 until paid or until an action therefor is commenced; but the wages shall not continue for more than
17 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her,
18 or who refuses to receive the payment when fully tendered to him or her, including any penalty
19 then accrued under this section, is not entitled to any benefit under this section for the time during
20 which he or she so avoids payment.” Cal. Lab. Code, § 203, subd. (a).

21 45. Throughout the Statutory Period, Employer failed to pay Employees at least
22 minimum wage, overtime, and all premium wages for all time worked, and failed to timely pay all
23 bonuses earned. These wages were owed and due to those Employees who were terminated at the
24 time of their termination or within 72 hours of resignation. Employer did not provide these
25 payments to Employees at the time of termination or within a sufficient time of resignation as
26 required by law. Employer’ failure to timely pay these wages at the time of termination, and
27 failure to pay Employees’ continued wages for the 30-day period thereafter, constitutes a violation
28 of Sections 201 and 203.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SEVENTH COUNT

Failure to Keep Accurate Records of Hours Worked

**(By Plaintiff against SAMEDAY TECHNOLOGIES INC., PRAESIDIUM DIAGNOSTICS
LLC, and DOES 1-25 Only)**

46. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

47. Pursuant to Labor Code section 1174, employers are mandated to “[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, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (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).” Cal. Lab. Code, § 1174.5.

48. Throughout the Statutory Period, Employer failed to keep accurate records showing the hours worked daily by Employees.

EIGHTH COUNT

Failure to Accurately Explain Bonus Program

**(By Plaintiff against SAMEDAY TECHNOLOGIES INC., PRAESIDIUM DIAGNOSTICS
LLC, and DOES 1-25 Only)**

49. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

50. “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Cal. Lab. Code, § 1198. Under the applicable IWC Wage Order, “[w]hen a[n] incentive plan is in operation, ... an explanation of the

1 incentive plan formula shall be provided to employees. An accurate production record shall be
2 maintained by the employer.”

3 51. Throughout the Statutory Period, Employer failed to provide the required
4 explanation of the incentive plan formula to employees and also failed to keep an accurate
5 production record to ensure employees were properly paid for their labor, as promised. Employer
6 is subject to additional civil penalties as a result.

7 **NINTH COUNT**

8 **Failure to Reimburse Expenses**

9 **(By Plaintiff against All Defendants)**

10 52. Plaintiff incorporates by reference and realleges each and every allegation
11 contained above, as though fully set forth herein.

12 53. Labor Code section 2802 provides: “(a) An employer shall indemnify his or her
13 employee for all necessary expenditures or losses incurred by the employee in direct consequence
14 of the discharge of his or her duties.... (d) In addition to recovery of penalties under this
15 section in a court action or proceedings pursuant to Section 98, the commissioner may issue a
16 citation against an employer or other person acting on behalf of the employer who violates
17 reimbursement obligations for an amount determined to be due to an employee under this section.
18 The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties
19 issued by the commissioner shall be the same as those set forth in Section 1197.1. Amounts
20 recovered pursuant to this section shall be paid to the affected employee.”

21 54. Throughout the Statutory Period, Employer promised to pay site managers a
22 stipend to cover their cell phones or a percentage thereof. The company was well aware that its
23 business operations depended on site managers using their personal cell phones. The Employer
24 required the site managers to use their personal cell phones to perform their job duties. The
25 Employer failed to pay the site managers the promised stipend.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

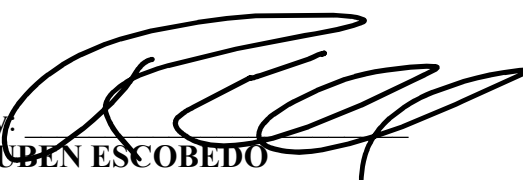
PRAYER

WHEREFORE, Plaintiff and Employees pray for judgment against Defendants, as follows:

1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount to be ascertained at trial exceeding \$25,000.
2. For reasonable costs and attorneys' fees; and
3. For such other and further relief as the Court deems proper.

DATED: January 18, 2022

WORKWORLD LAW CORP.
A Professional Corporation

By: 
RUBEN ESCOBEDO
Attorneys for CHRISTOPHER MCGILL
as Private Attorney General