

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Lawrence Riff

GRAHAMHOLLIS APC
Graham S.P. Hollis (SBN 120577)
ghollis@grahamhollis.com
Vilmarie Cordero (SBN 268860)
vcordero@grahamhollis.com
Hali M. Anderson (SBN 261816)
handerson@grahamhollis.com
Monique R. Rodriguez (SBN 304223)
mrodriguez@grahamhollis.com
Allison E. Schubert (SBN 339991)
aschubert@grahamhollis.com
3555 Fifth Avenue, Suite 200
San Diego, California 92103
Telephone: 619.692.0800
Facsimile: 619.692.0822

*Attorneys for Plaintiff Derek Lee and
All Aggrieved Employees*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DEREK LEE, in his representative
capacity, on behalf of the State of
California, the general public and all
aggrieved employees,

Plaintiff,

v.

ABC LEGAL SERVICES, INC, a
Washington corporation authorized to do
business in California; ABC LEGAL
SERVICES, LLC, a Washington limited
liability company authorized to do
business in California; ABC LEGAL
INVESTORS, INC., a Washington
corporation authorized to do business in
California; and DOES 1 through 50
inclusive,

Defendants.

Case No.: 22STCV11138

**PRIVATE ATTORNEYS GENERAL
ACT OF 2004 (Labor Code §§ 2698 et
seq.) ACTION COMPLAINT FOR
CIVIL PENALTIES**

Plaintiff Derek Lee (“Plaintiff”) brings this enforcement action in his representative capacity against Defendants ABC Legal Services, Inc., ABC Legal Services, LLC, ABC Legal Investors, Inc., and DOES 1 through 50, inclusive (collectively, “ABC Legal” or “Defendants”), on the following grounds:

INTRODUCTION

1. Plaintiff brings this enforcement action under the Private Attorneys General Act of 2004 (codified in California Labor Code §§ 2698 *et seq.*, “PAGA”) on behalf of himself and all other individuals who currently or formerly performed work for Defendants, individually and/or collectively, as a process server in California during the time period commencing on the date that is one (1) year and sixty-five (65) days prior to the filing of the initial complaint through and including the date that trial concludes (referred to herein as “Process Servers”).

2. Plaintiff alleges that during the relevant time period Defendants engaged in a common pattern and practice of wage and hour violations under the California Labor Code (“Labor Code”) and the Industrial Welfare Commission (“IWC”) Wage Orders by, among other things:

- a. Willfully misclassifying Process Servers as independent contractors;
- b. Failing to timely pay all minimum and/or regular wages;
- c. Failing to timely pay all overtime and/or double time wages;
- d. Failing to provide meal periods and/or timely pay premium wages;
- e. Failing to authorize or permit rest periods and/or timely pay premium wages;
- f. Unlawfully deducting wages during employment;
- g. Failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties;
- h. Failing to furnish accurate itemized wage statements;
- i. Failing to maintain accurate employment records; and
- j. Failing to reimburse for necessary business expenses.

3. By and through this enforcement action, Plaintiff seeks to recover all available remedies including, but not limited to, civil penalties, attorneys' fees, and litigation costs on behalf of himself and all other Process Servers, the general public, and the state of California.

4. All allegations in this Compliant are based upon information and belief except those allegations specifically pertaining to Plaintiff and/or his counsel, which are based upon personal knowledge. Each allegation in this Compliant has evidentiary support and/or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure ("Code of Civil Procedure") § 410.10 and Labor Code §§ 2698 *et seq.* Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiff brings this action, in his representative capacity, on behalf of himself and all other Process Servers, as defined herein.

6. This Court has personal jurisdiction over Defendants because Defendants conduct business in the state of California and have caused injuries in the county of Los Angeles, as well as throughout the state of California, through its acts and/or omissions, and by and through its violations of the Labor Code and relevant IWC Wage Order, as alleged herein.

7. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil Procedure §§ 395(a) and 395.5. Each Defendant, including each fictitiously named defendant, transacts business in the county of Los Angeles and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all other Process Servers within the county of Los Angeles and throughout the state of California.

THE PARTIES

I. PLAINTIFF

8. Plaintiff Derek Lee at all material times mentioned herein:

a. Was and is a resident of the County of Los Angeles, California;

b. Was employed by and/or otherwise performed work for ABC Legal from approximately March 27, 2017 to February 3, 2021 as a process server;

- c. Engaged in work for ABC Legal in the County of Los Angeles, California;
- d. Was improperly classified by ABC Legal as an independent contractor;
- e. Was paid on a piece-rate basis of \$15 to \$30 per service of process;
- f. Was to be paid on a bi-weekly basis, weekly basis, and/or every other day at different points during his employment;
- g. Should have been classified as a non-exempt employee for purposes of the Labor Code and IWC Wage Orders;
- h. Was subject to ABC Legal's control and direction in connection with the performance of his work;
- i. Did not perform work that is outside the usual course of ABC Legal's business;
- j. Was not customarily engaged in the business of process serving independently from the work he performed for ABC Legal;
- k. Regularly worked more than eight (8) hours per shift and/or forty (40) hours per week;
- l. Was required by ABC Legal to be readily available to perform work at all times during the day;
- m. Was not timely compensated the appropriate minimum, regular, overtime, and/or double time wages for all time worked or spent under the control of ABC Legal, including time spent performing non-productive tasks;
- n. Was not provided with the opportunity to take legally compliant meal periods and/or timely paid premium wages;
- o. Was not authorized or permitted to take legally compliant rest periods and/or timely paid premium wages;
- p. Contends that ABC Legal unlawfully deducted his wages;
- q. Was not timely paid all wages due and owing upon separation of the employment relationship;
- r. Was not paid waiting time penalties as provided for under California law;

- s. Was not furnished with itemized wage statements at the time of each payment of wages;
- t. Contends his employment records were not accurately maintained by ABC Legal;
- u. Was not reimbursed for all necessary business expenses;
- v. Is an “aggrieved employee” within the meaning of Labor Code § 2699(c); and
- w. Has complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

II. DEFENDANTS

9. Defendant ABC Legal Services, Inc. is a Washington corporation that was authorized to do business and conducted business in California prior to January 7, 2020, and thereafter reorganized as ABC Legal Services, LLC.

10. Defendant ABC Legal Services, LLC is a Washington limited liability company that is authorized to do business, and is actually doing business, in the state of California. ABC Legal Services, LLC is a service of process and court filing business, providing messenger services, document retrieval, e-filing, skip tracing, and other legal logistics and document management services.

11. Defendant ABC Legal Investors, Inc. is a Washington corporation that is authorized to do business, and is actually doing business, in the state of California. ABC Legal Investors, Inc. is believed to be an investor group for ABC Legal Services, LLC.

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

13. At all times mentioned herein, the acts alleged to have been done and/or caused by each named defendant is also alleged to have been done and/or caused by each of the fictitiously named defendants, and by each of their agents and/or employees who acted within the scope of their agency and/or employment.

14. At all times mentioned herein, each defendant, including each fictitiously named defendant, is believed to have acted individually or as an officer, agent, or employee of the other defendants.

15. At all times mentioned herein, each defendant, including each fictitiously named defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each of the other defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

16. At all times mentioned herein, the acts and/or omissions of each of the defendants, including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions of each and every one of the other defendants, including each fictitiously named defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of the defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Each defendant, including each fictitiously named defendant, was and is acting with authority of each and every other defendant and/or are acting as agents of each and every other defendant or Doe defendant.

17. At all times mentioned herein there was a unity of interest and ownership between each defendant, including each fictitiously named defendant, such that all defendants acted as a single employer of Plaintiff and all other Process Servers.

18. At all times mentioned herein, each defendant, including each fictitiously named defendant, exercised supervision and control over the wages, hours, and/or working conditions of Plaintiff and all other Process Servers, including, but not limited to, implementing standard policies and procedures.

19. At all times mentioned herein, each defendant, including each fictitiously named

defendant, caused Process Servers, including Plaintiff, to work and/or prevented Plaintiff and other Process Servers from working.

20. At all times mentioned herein, each defendant, including each fictitiously named defendant, had control over Process Servers.

21. Each defendant, including each fictitiously named defendant, is alleged to have caused each of the violations alleged herein.

22. Each defendant, including each fictitiously named defendant, is jointly and severally liable for each of the violations alleged herein.

FACTUAL ALLEGATIONS

23. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

24. Plaintiff was employed by, or otherwise performed work for, ABC Legal from about March 27, 2017 through and including February 3, 2021. Plaintiff performed work as a process server in Los Angeles County. As a process server, Plaintiff's job duties consisted of process serving, filing legal pleadings, logging status reports for other employees, and editing and printing documents, among other things. At all times during his employment, Plaintiff was improperly classified by ABC Legal as an independent contractor. Plaintiff earned a piece-rate of \$15 to \$30 per completed serve, and was paid on a biweekly basis, weekly basis, and/or every other day at different points during his employment with ABC Legal. Plaintiff typically worked Monday through Sunday and was expected to be available to perform work 24-hours a day.

25. Plaintiff asserts that ABC Legal has employed, and will continue to employ, other Process Servers throughout the state of California. Plaintiff alleges that Process Servers were, and continue to be, improperly classified by ABC Legal as independent contractors, and therefore were denied, and continue to be denied, the rights and protections afforded by the Labor Code and IWC Wage Order No. 4-2001.

26. Plaintiff contends that he and all other Process Servers were subject to, and continue to be subject to, the same and/or similar policies, practices, procedures, guidelines, and/or culture described herein.

1 27. Plaintiff further alleges that he and all other Process Servers have suffered, and will
2 continue to suffer, the same and/or similar violations of law described herein.

3 28. Plaintiff alleges that ABC Legal engaged in, and is engaging in, a pattern or practice
4 of willfully classifying Process Servers as independent contractors. Plaintiff and, on information
5 and belief, other Process Servers entered into an “Independent Contractor Services Agreement”
6 with ABC Legal, in which ABC Legal willfully and improperly classified Plaintiff and other
7 Process Servers as independent contractors rather than employees. Plaintiff contends that he and
8 other Process Servers are employees for purposes of the Labor Code and IWC Wage Order No.
9 4-2001 because ABC Legal retained, and continues to retain, control and direction over the
10 performance of Process Servers’ work, both under the contract for performance of the work and
11 in fact. For instance, ABC Legal primarily controls the scheduling of when Plaintiff and other
12 Process Servers perform work. Specifically, Plaintiff was unable to set his own work schedule
13 because ABC Legal required Plaintiff to begin working on an assignment as soon as he received
14 it, regardless of the time of day. ABC Legal’s “Independent Contractor Services Agreement”
15 provides that Process Servers must “maintain strict compliance with turnaround times and other
16 performance requirements.” In addition, ABC Legal’s “Guidelines and Expectations Agreement”
17 explicitly states that Plaintiff and other Process Servers are not permitted to attempt service before
18 7:00 a.m. or after 10:00 p.m.

19 29. ABC Legal further exercised control over Plaintiff’s and other Process Servers’
20 work performance by setting and requiring Process Servers to meet performance quotas and
21 monitoring Process Servers’ performance metrics and GPS location via the “ABC Legal Services”
22 mobile application, which Process Servers were mandated to download. Indeed, ABC Legal’s
23 “Independent Contractor Services Agreement” requires Process Servers to “input into ABC’s
24 mobile application or ABC’s website ... all collected service information” as a “condition of
25 receiving payment for services provided.” The “Guidelines and Expectations Agreement” reflects
26 the same requirement, stating that Process Servers “shall report every service or attempted service
27 according to ABC’s reporting requirements,” which includes “[u]sing the ABC Mobile app” with
28 their “device’s GPS turned on.” Plaintiff contends that if he and, on information and belief, other

1 Process Servers fell behind in their assigned workload, their status in the mobile application would
2 be flagged as being in the “red zone” and they would be subject to reprimand by ABC Legal
3 including, but not limited to, a reduction of pay for the service.

4 30. Plaintiff asserts that ABC Legal supervised Process Servers, including himself, in
5 the performance of their work. For instance, Plaintiff was regularly required to confirm with his
6 supervisor before making work-related decisions, such as those concerning service of process.
7 Additionally, ABC Legal independently reduced the amount paid to the Process Servers for
8 services that ABC Legal unilaterally determined did not satisfy their arbitrary standards. Thus,
9 ABC Legal did not permit Plaintiff and other Process Servers to use independent judgment in the
10 performance of their work.

11 31. Plaintiff further contends that he and other Process Servers were improperly
12 classified as independent contractors because he and other Process Servers did not perform work
13 for ABC Legal outside ABC Legal’s usual course of business, as Plaintiff is informed and believes
14 that ABC Legal primarily provides service of process and court filing services. Moreover, Plaintiff
15 asserts, based on information and belief, that all Process Servers rely solely on the work of ABC
16 Legal and are not customarily engaged in the business of process serving independently from the
17 work performed for ABC Legal.

18 32. Plaintiff therefore alleges that there is a clear employer-employee relationship
19 between ABC Legal and all Process Servers, including Plaintiff, as indicated by the level of
20 control retained by ABC Legal over the performance of Process Servers’ work, the fact that
21 Process Servers performed work that is aligned with ABC Legal’s usual course of business, and
22 because Process Servers are not independently engaged in the business of process serving.
23 Plaintiff asserts that ABC Legal’s policy, practice, procedure, guideline, and/or culture of willfully
24 classifying Process Servers as independent contractors is therefore in violation of California law.

25 33. Plaintiff alleges that ABC Legal had, and continues to have, a policy, practice,
26 procedure, guideline, and/or culture of failing to timely pay all minimum and/or regular wages for
27 all time engaged in work on behalf of ABC Legal on the day designated in advance by ABC Legal
28 as the regular pay day.

1 34. Plaintiff contends that he and other Process Servers were not paid at least minimum
2 wages for all hours worked or spent under the control of ABC Legal, including time spent
3 performing non-productive tasks. In addition to process serving, for which Plaintiff and other
4 Process Servers were to be paid on a piece-rate basis, Plaintiff and other Process Servers were
5 also required to manage and log status reports for other employees; edit, print, and manage
6 documents; and be readily available to serve process at all times during the day. Plaintiff contends
7 that ABC Legal failed to provide remuneration to Process Servers, including himself, for non-
8 productive time. Moreover, Plaintiff asserts that ABC Legal failed to separately compensate
9 Process Servers, including Claimant, at least minimum wages for time spent taking rest periods.

10 35. Plaintiff also alleges that ABC Legal had, and continues to have, a policy, practice,
11 procedure, guideline, and/or culture of failing to pay Process Servers all overtime and/or double
12 time wages no later than the pay day for the next regular payroll period. Plaintiff avers that he
13 and, on information and belief, other Process Servers regularly worked in excess of eight (8) hours
14 and/or twelve (12) hours in a workday and/or forty (40) hours in a workweek, but were not paid
15 any overtime and/or double time wages by ABC Legal.

16 36. Plaintiff alleges that ABC Legal had, and continues to have, a policy, practice,
17 procedure, guideline, and/or culture of failing to provide Process Servers, including himself, with
18 the opportunity to take legally compliant meal periods and/or timely paying premium wages for
19 non-compliant meal periods.

20 37. Plaintiff contends that ABC Legal did not, and does not, have a policy, practice,
21 guideline, procedure and/or culture of providing Process Servers with the opportunity to take a
22 thirty (30) minute, off-duty, uninterrupted meal period that is free from ABC Legal's control when
23 they worked more than six (6) hours in a day, nor does ABC Legal have a policy, practice,
24 guideline, procedure and/or culture of providing a second thirty (30) minute, off-duty,
25 uninterrupted meal period that is free from ABC Legal's control when they worked more than ten
26 (10) hours in a day. Rather, ABC Legal required Plaintiff and other Process Servers to be readily
27 available to perform work 24-hours per day, which included any time Plaintiff and other Process
28 Servers attempted to take a meal period. Additionally, ABC Legal mandated that Process Servers

1 manage and log status reports for other employees; edit, print, and manage documents; and to
2 perform all serves during a specific period of time. Consequently, Process Servers were
3 consistently interrupted during their meal periods, required to work through their meal periods,
4 and/or not provided with meal periods at all.

5 38. Despite not receiving legally compliant meal periods, Plaintiff asserts that he and
6 other Process Servers did not receive premium wages equivalent to an additional hour of pay at
7 their regular rate of pay for each day they were not provided with compliant meal periods.

8 39. Plaintiff alleges that ABC Legal had, and continues to have, a policy, practice,
9 procedure, guideline, and/or culture of failing to authorize and permit him and other Process
10 Servers with legally compliant rest periods and/or timely paying premium wages for non-
11 compliant rest periods.

12 40. As a result of ABC Legal's requirement for Process Servers, including Plaintiff, to
13 be readily available to respond to work needs at all times during the day, Process Servers were
14 not authorized or permitted to take an off-duty, uninterrupted, ten (10) minute rest period for every
15 four (4) hours worked or major faction thereof. Plaintiff contends that he and, on information and
16 belief, other Process Servers were *rarely, if ever*, provided with a legally compliant rest period.

17 41. Plaintiff contends that although he and other Process Servers were not authorized
18 and permitted to take legally compliant rest periods, he and all other Process Servers were not
19 compensated rest period premium wages for all non-compliant rest periods as required by
20 California law.

21 42. Plaintiff alleges that ABC Legal had, and continues to have, a policy, practice,
22 procedure, guideline, and/or culture of unlawfully deducting wages paid to Plaintiff and other
23 Process Servers.

24 43. Plaintiff claims that he and other Process Servers had their wages unlawfully
25 deducted by ABC Legal if their service of process did not satisfy ABC Legal's arbitrary standards.
26 In addition, ABC Legal failed to separately pay any expenses paid for or incurred by Process
27 Servers, including Plaintiff, in connection with completing orders. ABC Legal's "Independent
28 Contractor Services Agreement" states the following: "ABC's payments to Contractor will cover

1 all of Contractor's efforts [and] expenses... ABC will not be separately responsible to Contractor
2 for any expenses paid or incurred by Contractor, including mileage associated with the services
3 Contractor provides[.]” Plaintiff contends that these deductions were made for the sole benefit of
4 ABC Legal by allowing ABC Legal to pass on payroll and other employment-related expenses to
5 Plaintiff and other Process Servers. Thus, ABC Legal's deductions from wages paid to Plaintiff
6 and other Process Servers are in violation of California law.

7 44. Plaintiff alleges that ABC Legal had, and continues to have, a policy, practice,
8 procedure, guideline, and/or culture of willfully failing to timely pay Process Servers all wages
9 due and owing at the time of separation and/or the required waiting time penalties for the late
10 payment of such wages. For instance, ABC Legal terminated Plaintiff's “contract” on or around
11 February 3, 2021; however, Plaintiff was not immediately paid all of his wages due and owing
12 including, but not limited to, unpaid minimum, regular, overtime, double time, and/or premium
13 wages. Plaintiff also contends that, to date, he has not received all wages owed nor the required
14 waiting time penalties. Plaintiff further contends, based on information and belief, that ABC Legal
15 did not and has yet to pay any waiting time penalties to former Process Servers for the late payment
16 of final wages.

17 45. Plaintiff alleges that ABC Legal had, and continues to have, a policy, practice,
18 procedure, guideline, and/or culture of failing to furnish itemized wage statements to Plaintiff and
19 other Process Servers. Specifically, Plaintiff did not receive an itemized wage statement at the
20 time of each payment of his wages. As a result, Plaintiff and, on information and belief, other
21 Process Servers were not furnished with wage statements reflecting the information required by
22 California law including, but not limited to, all applicable hourly rates in effect during the pay
23 period, the corresponding number of hours worked at each hourly rate by the employee, the actual
24 gross and net wages earned, and the required employee and employer information.

25 46. Due to ABC Legal's failure to furnish wage statements, Plaintiff and, on
26 information and belief, other Process Servers were unable to promptly and easily determine the
27 total number of hours actually worked, the applicable hourly rates in effect during the pay period,
28 and/or the corresponding number of hours worked at each hourly rate, among other things.

1 47. Plaintiff alleges that ABC Legal had, and continues to have, a policy, practice,
2 procedure, guideline, and/or culture of knowingly and intentionally failing to maintain accurate
3 employment records for Process Servers.

4 48. Because of ABC Legal's illegal policies, practices, guidelines, procedures, and/or
5 culture described herein including, but not limited to, the failure to record the total hours of
6 compensable time worked, such as time spent performing non-productive tasks, Plaintiff asserts
7 that ABC Legal knowingly and intentionally failed to maintain accurate records reflecting when
8 the Process Servers started and ended each work period, meal periods, total daily hours actually
9 worked, total hours worked in each payroll period, and actual wages earned and paid, among other
10 things, in violation of California law. Furthermore, ABC Legal failed to provide Process Servers,
11 including Plaintiff, with an explanation of the applicable piece rate or compensation plan.

12 49. Plaintiff alleges that ABC Legal had, and continues to have, a policy, practice,
13 procedure, guideline, and/or culture of failing to reimburse Process Servers, including himself, for
14 necessary business expenses incurred in the discharge of their job duties.

15 50. Plaintiff asserts that ABC Legal required Process Servers, including himself, to use
16 their personal cell phones to download the "ABC Legal Services" mobile application for the
17 purpose of tracking their GPS location and logging their performance metrics. Plaintiff further
18 asserts that he and other Process Servers were required to use their personal vehicles to perform
19 job duties including, but not limited to, delivering court filings and driving to serve individuals
20 and/or entities. In addition, Plaintiff and other Process Servers incurred expenses when printing
21 documents but were not fully reimbursed by ABC Legal. Specifically, ABC Legal only provided
22 reimbursement in the amount of 8 cents per page, which was less than the amount of 15 cents per
23 page actually paid by Plaintiff and other Process Servers. Plaintiff further asserts that he and other
24 Process Servers were obligated to purchase office supplies in order to carry out their work duties.

25 51. Despite the requirement that Process Servers use their personal cell phones and/or
26 vehicles, incur copying and printing expenses, and purchase office supplies for work purposes,
27 Plaintiff and other Process Servers did not receive any reimbursement for these expenses from
28 ABC Legal in violation of California law. Indeed, ABC Legal's "Independent Contractor Services

1 Agreement” explicitly states that ABC Legal will not be separately responsible to Process Servers
2 for any expenses incurred, including mileage or equipment, materials, or supplies.

3 52. On January 24, 2022, Plaintiff submitted written notice to the California Labor and
4 Workforce Development Agency (“LWDA”) and ABC Legal as required by the PAGA, informing
5 them of ABC Legal’s alleged violations of the Labor Code, including the facts and theories to
6 support each violation. A true and correct copy of the January 24, 2022 written notice is attached
7 hereto as **Exhibit 1** and is incorporated herein by reference.

8 53. To date, which is more than 65 days after submission of Plaintiff’s written notice,
9 the LWDA has not provided notice of its intent to investigate Plaintiff’s alleged violations of the
10 Labor Code. Pursuant to the PAGA, Plaintiff has the right to pursue, and does so pursue, the
11 asserted claims in a representative action in his representative capacity on behalf of himself and
12 all other Process Servers, the general public and the state of California as permitted by Labor Code
13 § 2699.3.

14 54. Plaintiff further believes that additional violations may be discovered and therefore
15 reserves his right to allege additional violations of the law as investigation and discovery warrants.
16 In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative
17 complaint as necessary.

18 **PAGA DESIGNATION**

19 55. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
20 paragraphs of this Complaint.

21 56. By and through this enforcement action, Plaintiff intends to represent the following
22 aggrieved employees:

23 All individuals who currently or formerly performed work for
24 Defendants, individually and/or collectively, as a process server in
25 California during the period commencing on the date that is within
26 one year and sixty-five days prior to the filing of this Complaint
27 through and including the last date of trial (hereinafter the “PAGA
28 Period”). To the extent that California Rules of Court, Appendix I,
Emergency Rule 9 and/or equitable tolling operates to toll the claims
by the aggrieved employees against Defendants, individually and/or
collectively, the PAGA Period should be adjusted accordingly.

1 57. Process Servers (i.e., aggrieved employees) are all “employees” as the term is used
2 in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in
3 the state of California.

4 58. A more precise definition of the aggrieved employees may be determined after
5 further investigation and discovery. Plaintiff reserves his right to redefine the group of aggrieved
6 employees as permitted by California law.

7 59. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for
8 a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
9 commissions, boards, agencies or employees for violation of the code may, as an alternative, be
10 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself
11 and other current or former employees pursuant to the procedures specified in Labor Code §
12 2699.3. Such civil penalties are in addition to any other relief provided for under the Labor Code
13 and must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to
14 the aggrieved employees, pursuant to Labor Code § 2699(i).

15 60. During all, or a portion of, the one-year and sixty-five day period before Plaintiff
16 filed notice of his claims with the LWDA, ABC Legal was Plaintiff’s and all other Process
17 Servers’ employer or person acting on behalf of Process Servers’ employer, either individually or
18 as an officer, agent, or employee of another person, within the meaning of Labor Code §§ 558(a)
19 and 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed
20 by California state law, and as such, is subject to civil penalties for each underpaid employee, as
21 well as liquidated damages pursuant to Labor Code § 1194.2, and any applicable penalties
22 imposed pursuant to Labor Code § 203.

23 61. Plaintiff is an “aggrieved employee” under the PAGA because he was employed by
24 the alleged violator, ABC Legal, and experienced one or more of the alleged violations outlined
25 herein, and therefore is properly suited to represent the interests of other Process Servers. (See
26 *Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington*
27 *v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519.)

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62. Plaintiff alleges that all other Process Servers are also “aggrieved employees” under the PAGA because ABC Legal employed them and all Process Servers experienced one or more of the alleged violations outlined herein.

63. Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiff has exhausted his administrative remedies because he complied with the notice requirements outlined in Labor Code § 2699.3. On January 24, 2022, Plaintiff submitted notice to the LWDA and ABC Legal informing them of ABC Legal’s alleged Labor Code violations pursuant to the PAGA. (See Exh. 1.) The LWDA had sixty-five (65) days under the PAGA to provide notice of whether it intended to investigate the alleged violations. To date, the LWDA has not provided notice of its intent to investigate the alleged violations. Plaintiff thus has the right to pursue, and does pursue, the asserted claims under the PAGA in a representative capacity pursuant to Labor Code § 2699.

64. As set forth herein, ABC Legal has committed, and continues to commit, numerous violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in his representative capacity, to recover, on behalf of himself, all other Process Servers, the state of California, and the general public, civil penalties as well as attorneys’ fees and costs from ABC Legal for the alleged violations, described herein.

65. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 221, 224, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Plaintiff and other Process Servers are entitled to, and therefore seek, the civil penalties described in Labor Code § 2699(f) for the violations of law described herein.

66. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys’ fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Process Servers, is entitled to, and therefore seeks, attorneys’ fees and costs.

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67. Plaintiff expressly disclaims the recovery of any “amount sufficient to recover underpaid wages” on behalf himself and all other Process Servers.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff, in his Representative Capacity, against Defendants and Does 1-50)

PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code §§ 2698 *et seq.*]

68. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

69. Plaintiff, in his representative capacity on behalf of himself and all other Process Servers, is entitled to and thus seeks to recover civil penalties through an enforcement action based on violations of the following Labor Code and/or IWC Wage Order provisions:

- a. Willfully misclassifying Process Servers as independent contractors in violation of Labor Code §§ 226.8, 2775, and 3353;
- b. Failing to timely pay all minimum and/or regular wages during employment in violation of Labor Code §§ 204, 210, 226.2, 1194, 1194.2, 1197, 1197.1, 1198, and the “Minimum Wages” section of IWC Wage Order 4-2001;
- c. Failing to timely pay all overtime and/or double time wages during employment in violation of Labor Code §§ 204, 210, 510, 558, 1194, 1198, and the “Hours and Days of Work” section of IWC Wage Order 4-2001;
- d. Failing to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods during employment in violation of Labor Code §§ 204, 226.7, 512, and the “Meal Periods” section of IWC Wage Order 4-2001;
- e. Failing to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods during employment in violation of Labor Code §§ 204, 226.7, and the “Rest Periods” section of IWC Wage Order 4-2001;

- f. Unlawfully deducting wages during employment in violation of Labor Code §§ 221, 224, and 225.5;
- g. Failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties in violation of Labor Code §§ 201-203;
- h. Failing to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and the “Records” section of IWC Wage Order 4-2001;
- i. Failing to maintain accurate employment records in violation of Labor Code §§ 226, 1174, 1174.5, and the “Records” section of IWC Wage Order 4-2001; and
- j. Failing to reimburse for necessary business expenses in violation of Labor Code § 2802.

70. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code § 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff, in his representative capacity on behalf of himself and all other Process Servers, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 210.

71. Labor Code § 225.5 provides that “every person who unlawfully withholds wages due to any employee in violation of Section ...221... shall be subject to a civil penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee...” Plaintiff, in his representative capacity on behalf of himself and all other Process Servers, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 225.5.

72. For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation for an initial citation and \$1,000 per employee for each

1 violation in a subsequent citation, in addition to any other penalty provided by law. Plaintiff, in
2 his representative capacity on behalf of himself and all other Process Servers, is entitled to, and
3 therefore seeks, the civil penalty imposed by Labor Code § 226.3.

4 73. Where an employer has engaged in or is engaging in a pattern or practice of willfully
5 misclassifying individuals as independent contractors, Labor Code § 226.8(c) imposes on the
6 employer a civil penalty of not less than ten thousand (\$10,000) and not more than twenty-five
7 thousand dollars (\$25,000), in addition to any other penalties permitted by law. Plaintiff, in his
8 representative capacity on behalf of himself and all other Process Servers, is entitled to, and
9 therefore seeks, the civil penalty imposed by Labor Code § 226.8(c).

10 74. For violations of Labor Code §§ 510 and 512, in addition to any other recovery
11 provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each
12 underpaid employee for the initial violation and \$100 per pay period for each underpaid employee
13 for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any
14 provision regulating hours and days of work in any order of the IWC. Plaintiff, in his
15 representative capacity on behalf of himself and all other Process Servers, is entitled to, and
16 therefore seeks, the civil penalty imposed by Labor Code § 558.

17 75. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to
18 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of
19 \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code §
20 2699 for a violation of Labor Code § 1174(d). Plaintiff, in his representative capacity on behalf
21 of himself and all other Process Servers, is entitled to, and therefore seeks, the civil penalty
22 imposed by Labor Code § 1174.5.

23 76. Labor Code § 1197.1 imposes a civil penalty of \$100 for each underpaid employee
24 for each pay period for which the employee is underpaid and a subsequent civil penalty of \$250
25 for each underpaid employee for each pay period for which the employee is underpaid for paying
26 or causing an employee to be paid a wage less than the minimum wage. Plaintiff, in his
27 representative capacity on behalf of himself and all other Process Servers, is entitled to, and
28 therefore seeks, the civil penalty imposed by Labor Code § 1197.1.

77. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 221, 224, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Plaintiff, in his representative capacity on behalf of himself and all other Process Servers, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 2699(f).

78. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Process Servers, is entitled to, and therefore seeks, attorneys' fees and costs.

79. Plaintiff, in his representative capacity on behalf of himself and all other Process Servers, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code §§ 218.5, 226(e), 1194, 2699(g)(1), and 2802, as well as Code of Civil Procedure § 1021.5 and the "common fund" theory, the "substantial benefit" theory, and the "catalyst" theory.

80. Plaintiff, in his representative capacity on behalf of himself and all other Process Servers, requests further relief as described in the below prayer for relief.

PRAYER FOR RELIEF

Plaintiff, in his representative capacity, prays for judgment against Defendants and in favor of the state of California, Plaintiff, and all other Process Servers as follows:

- a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code §§ 210, 225.5, 226.3, 226.8(c), 558, 1174.5, 1197.1, 2699(f), and/or other applicable law;
- b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code § 2699(f);

- 1 c. For reasonable attorneys' fees and costs of suit to the extent permitted by
2 law, including, but not limited to, Labor Code §§ 218.5, 226(e), 1194, 2802,
3 2699(g)(1), Code of Civil Procedure § 1021.5, and the "common fund"
4 theory, the "substantial benefit" theory, the "catalyst" theory and/or other
5 applicable law; and
6 d. For any and all other relief as this Court deems proper and just and is
7 available under Labor Code §§ 2698 *et seq.*
8

9 Dated: April 1, 2022

GRAHAMHOLLIS APC

10 By:



11 GRAHAM S.P. HOLLIS

12 VILMARIE CORDERO

13 HALI M. ANDERSON

14 MONIQUE R. RODRIGUEZ

15 ALLISON E. SCHUBERT

16 *Attorneys for Plaintiff Derek Lee*

17 *and All Aggrieved Employees*
18
19
20
21
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28

EXHIBIT 1

January 24, 2022

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Monique R. Rodriguez
mrodriguez@grahamhollis.com
619.546.4373 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

ABC Legal Services, Inc.
633 Yesler Way
Seattle, WA 98104

ABC Legal Services, LLC
633 Yesler Way
Seattle, WA 98104

ABC Legal Investors, Inc.
633 Yesler Way
Seattle, WA 98104

ABC Legal Services, LLC
c/o ABC Legal Services, LLC,
Agent for Service of Process
316 W 2nd St. 3rd Floor
Los Angeles, CA 90012

ABC Legal Investors, Inc.
c/o Corporation Service Company Which Will Do
Business In California As CSC – Lawyers
Incorporating Service, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

**Re: Derek Lee's PAGA Claims Against ABC Legal Services, Inc.,
ABC Legal Services, LLC and ABC Legal Investors, Inc.**

Dear California Labor and Workforce Development Agency, ABC Legal Services, Inc.,
ABC Legal Services, LLC, and ABC Legal Investors, Inc.:

Please be advised that Derek Lee ("Claimant") has retained our firm, GrahamHollis APC, to represent him for various claims against ABC Legal Services, Inc., ABC Legal Services, LLC, and ABC Legal Investors, Inc. (collectively, the "Companies").

Please be advised that this letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Companies of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Companies committed against him and all other current or former employees who performed work for the Companies, individually and/or collectively, as process servers in

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

David Lin

Erik Dos Santos

Monique Rodriguez

Nora Steinhagen

Evan J. Armstrong

Alyssa Smith

Allison Schubert

*Provisionally Licensed Lawyer

California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support his Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, “PAGA”), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this written notice, Claimant intends to represent himself and all other individuals who currently or formerly performed work for the Companies, individually and/or collectively, as a process server in California during the relevant time period (referred to herein as “Process Servers”). All Process Servers, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant therefore contends that he and all other Process Servers are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

ABC Legal Services, Inc. is believed to have surrendered its authorization to conduct business in California on January 7, 2020, and thereafter reorganized as ABC Legal Services, LLC. ABC Legal Services, LLC is a Washington limited liability company authorized to do business in the state of California. ABC Legal Services, LLC is believed to be a service of process and court filing business which provides legal logistics and document management services such as messenger service, document retrieval, e-filing, and skip tracing to customers throughout the United States, including California.

ABC Legal Investors, Inc. is a Washington corporation with its principal place of business located in Seattle, Washington. ABC Legal Investors, Inc. is believed to be an investor group for ABC Legal Services, LLC.

Claimant performed work for the Companies, individually and/or collectively, as a process server from approximately March of 2017 to February 3, 2021. As a process server, Claimant was responsible for process serving, filing legal pleadings, logging status reports for other employees, and editing and printing documents, among other tasks. During his employment, Claimant typically worked Monday through Sunday and was expected to be available to perform work 24-hours a day. Claimant was compensated on piece-rate basis of \$15 to \$30 per serve, depending on the location in which the service of process was made. Claimant was paid twice per week, once weekly, and every other day at different points during his employment with the Companies, individually and/or collectively. At all relevant times, the Companies, individually and/or collectively, improperly classified Claimant as an independent contractor. As discussed herein, Claimant should have been classified as a non-exempt employee and received the protections afforded by the Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders.

Claimant contends, based on information and belief, that all policies, practices, procedures and/or guidelines of the Companies, individually and/or collectively, applicable to Claimant were also applicable to all other Process Servers throughout the relevant time period. Claimant further contends, based on information and belief, that he and all other Process Servers suffered, and will continue to suffer, the same and/or similar violations of law described herein. Furthermore, Claimant contends that ABC Legal Services, Inc., ABC Legal Services, LLC, and/or ABC Legal Investors, Inc. are jointly and severally liable for the claims asserted herein since at all relevant times ABC Legal Services, Inc., ABC Legal Services, LLC, and/or ABC Legal Investors, Inc. exercised control over the wages, hours and/or working conditions of all

Process Servers, including Claimant; caused Process Servers to work and/or prevented Process Servers from working; and had control over Process Servers.

Claimant alleges that the Companies, individually and/or collectively, willfully misclassified Claimant and other Process Servers as independent contractors. As a direct result of the Companies', individual and/or collective, scheme of purposefully misclassifying Claimant and other Process Servers as independent contractors, the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Process Servers the specific rights afforded to them under the Labor Code and IWC Wage Order No. 4-2001. Specifically, the Companies, individually and/or collectively, failed, and continue to fail, to timely pay all minimum, regular, and/or overtime wages to all Process Servers, including Claimant; failed, and continue to fail, to provide Claimant and other Process Servers with meal and/or rest periods and/or timely pay them premium wages; unlawfully deducted wages owed to Claimant and other Process Servers; failed to timely pay Claimant and other former Process Servers all wages due and owing upon separation of employment and/or pay the required waiting time penalties; failed, and continue to fail, to provide all Process Servers, including Claimant, with accurate itemized wage statements; failed, and continue to fail, to maintain accurate employment records; and failed, and continue to fail, to reimburse Claimant and other Process Servers for necessary business expenses.

Claimant alleges that the Companies, individually and/or collectively, have a policy, practice, procedure, and/or guideline of willfully misclassifying Process Servers, including Claimant, as independent contractors. Pursuant to the Companies' "Independent Contractor Services Agreement," Claimant and other Process Servers are classified as independent contractors and not employees of the Companies, individually and/or collectively. However, Labor Code §§ 2750.5 and 2775 set forth a rebuttable presumption that all Process Servers, including Claimant, are employees of the Companies, individually and/or collectively. As discussed below, the Companies will be unable to meet all three conditions under Labor Code §§ 2750.5 and 2775 necessary to rebut the statutory presumption that Process Servers are employees.

The Companies, individually and/or collectively, retain control and direction over the performance of Process Servers' work. For instance, the Companies, individually and/or collectively, primarily controlled the scheduling of when Process Servers performed work. Specifically, Claimant was unable to set his own schedule, as he was required to begin working on an assignment as soon as he received it, no matter the time of day, and was unable to begin process serving until 8:00 a.m. Additionally, the Companies, individually and/or collectively, set and required Process Servers to meet performance quotas and monitored each Process Servers' performance metrics and GPS location via the "ABC Legal Services" mobile application, which Process Servers were required to download. If Claimant and, on information and belief, other Process Servers fell behind in their assigned workload, their status in the application would be flagged as being in the "red zone." The Companies, individually and/or collectively, also supervised Claimant and other Process Servers in the performance of their work. For instance, Claimant would often have to confirm with his supervisor before making decisions regarding serving process and other work tasks.

Moreover, Claimant and other Process Servers did not perform work that is outside the usual course of the Companies' business, as the Companies, individually and/or collectively, primarily provide service of process and court filing services. Claimant, and on information and belief other Process Servers, are

believed to rely solely on the work of the Companies, individually and/or collectively, and are not customarily engaged in the business of process serving independently from the work performed by the Companies, individually and/or collectively.

Thus, the level of control retained by the Companies, individually and/or collectively, over Process Servers' performance of work, as well as the fact that Process Servers perform work within the usual course of the Companies' business, and because Process Servers are not independently engaged in the business of process serving, there is a clear employer-employee relationship between the Companies, individually and/or collectively, and Process Servers, including Claimant. The Companies', individual and/or collective, policy, practice, procedure and/or guideline of classifying Process Servers as "independent contractors" is therefore in violation of California law.

Claimant asserts that the Companies, individually and/or collectively, have a policy, practice, procedure, and/or guideline of not paying Process Servers all minimum, regular, overtime, and/or double time wages for all time actually worked or spent under the control of the Companies, individually and/or collectively, on the day designated in advance as the regular pay day. Claimant and other Process Servers were paid \$15 to \$30 per service of process as piece-rate. However, Claimant and other Process Servers did not earn at least minimum wages for all hours worked, including time spent performing non-productive tasks. For instance, Claimant was required to manage and log status reports for other employees, perform document management, and be readily available to serve process at all times during the day, for which he did not receive any compensation. In addition, the Companies, individually and/or collectively, failed to separately compensate Process Servers, including Claimant, at least minimum wages for time spent taking rest periods. Furthermore, Claimant and, on information and belief, other Process Servers regularly worked in excess of eight (8) hours and/or twelve (12) hours in a workday and/or forty (40) hours in a workweek, but were not paid any overtime wages. Thus, Claimant contends that he and other Process Servers were not timely paid all minimum, regular, overtime, and/or double time wages for all hours worked and/or spent under the control of the Companies, individually and/or collectively, in violation of California law.

Claimant alleges that the Companies, individually and/or collectively, have a policy, practice, procedure, and/or guideline of not providing Process Servers, including Claimant, with the opportunity to take 30-minute, off-duty, uninterrupted meal periods that were free from the employer's control when they worked more than six (6) hours in a day. Claimant also alleges that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of not providing Claimant and other Process Servers with the opportunity to take a second 30-minute, off-duty, uninterrupted meal period that was free from the employer's control when they worked more than ten (10) hours in a day. Claimant asserts that he and other Process Servers were not provided with the opportunity to take lawful meal periods because the Companies, individually and/or collectively, have a policy, practice, procedure, and/or guideline of requiring Process Servers to be readily available to respond to work needs 24-hours per day, including any time Claimant and other Process Servers attempted to take a meal period.

For the same reasons, Claimant and other Process Servers were not authorized or permitted by the Companies, individually and/or collectively, to take an off-duty, uninterrupted, 10-minute rest period for every four (4) hours worked or major fraction thereof. Thus, Claimant contends that he and, on information and belief, other Process Servers were never provided with a legally compliant rest period.

Although Process Servers, including Claimant, did not receive legally compliant meal and/or rest periods, Claimant and, on information and belief, other Process Servers did not receive premium wages equivalent to an additional hour of pay at their regular rate of pay for each day they were not provided compliant meal and/or rest periods.

Claimant contends that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of making unlawful deductions to wages paid to Claimant and other Process Servers. For instance, Claimant's and, on information and belief, other Process Servers' pay was deducted if the service of process did not satisfy arbitrary standards set by the Companies, individually and/or collectively. Further, The Companies, individually and/or collectively, refused to separately pay any expenses paid or incurred by the Process Server for the order. These deductions constitute an unlawful deduction from wages as the deduction is for the sole benefit of the Companies, individually and/or collectively, by allowing the Companies to pass on payroll and other employment-related expenses to Process Servers. Claimant therefore contends that the Companies, individually and/or collectively, have secretly underpaid Process Servers in violation of California law.

Claimant alleges that the Companies, individually and/or collectively, have a policy, practice, procedure, and/or guideline of not timely paying former Process Servers, such as himself, all wages due and owing upon separation of employment and/or the required waiting time penalties for the late payment of wages. For instance, Claimant contends that despite his contract with the Companies being terminated on or around February 3, 2021, he was not immediately paid all of his wages due and owing including, but not limited to, unpaid minimum, regular, overtime, and/or premium wages. Claimant also contends that, to date, he has not received all wages owed nor the required waiting time penalties. Claimant further contends, based on information and belief, that other former Process Servers were not timely paid all wages due and owing upon separation of employment and/or the required waiting time penalties.

Claimant contends that the Companies, individually and/or collectively, have a policy, practice, procedure, and/or guideline of not furnishing Process Servers, including Claimant, with wage statements. For instance, Claimant contends that the Companies, individually and/or collectively, failed to furnish him and, on information and belief, other Process Servers with an itemized wage statement at the time of each payment of wages. As a result, Claimant and other Process Servers did not receive wage statements reflecting the information required by California law including, but not limited to, the total hours worked by the employee, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, the gross wages earned, the net wages earned, and the pay period information for each wage statement. Due to the Companies', individual and/or collective, failure to furnish wage statements, Claimant and other Process Servers were unable to promptly and easily determine, for example, the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Claimant asserts that the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of not maintaining accurate employment records. The Companies', individual or collective, illegal policies, practices, procedures, and/or guidelines, such as those described herein, including the Companies' failure to record all hours worked, have resulted in the Companies', individual and/or collective, failure to maintain accurate records reflecting Process Servers' actual time worked and

actual wages earned and paid, among other things, in violation of California law. Moreover, the Companies, individually and/or collectively, failed to provide Claimant and, on information and belief, other Process Servers with an explanation of the applicable piece rate or incentive plan, as required by the Labor Code.

Claimant also alleges that the Companies, individually and/or collectively, have a policy, practice, procedure, and/or guideline of not reimbursing Claimant and other Process Servers for all necessary business expenses that were incurred in the discharge of their job duties. For instance, Claimant and, on information and belief, other Process Servers were required to download the “ABC Legal Services” application on their personal cell phones in order to track their GPS location and log their performance metrics. Claimant contends that he and other Process Servers did not receive any reimbursement for the use of their personal cell phones. Moreover, Claimant and, on information and belief, other Process Servers were required to use their personal vehicles to deliver court filings and perform other job duties, but were not reimbursed for gas and/or mileage. Claimant further contends that he and other Process Servers incurred expenses in the amount of 15 cents per page when printing documents, but the Companies, individually and/or collectively, only reimbursed 8 cents per page, which is less than the amount incurred. Additionally, Claimant purchased office supplies for which he received no reimbursement. Notably, the Companies’ “Independent Contractor Services Agreement” explicitly states that the Companies, individually and/or collectively, will not be separately responsible to Process Servers for any expenses incurred, including mileage or equipment, materials, or supplies. Thus, Claimant and, on information and belief, other Process Servers did not receive reimbursement for the use of their personal cell phones and/or vehicles, copying and printing expenses, purchase of office supplies, and other expenses incurred in discharge of their job duties.

Due to the foregoing Labor Code violations, the Companies, individually and/or collectively, denied, and continue to deny, Claimant and other Process Servers certain rights afforded to them under the Labor Code and IWC Wage Order No. 4-2001. Claimant makes these claims against the Companies, individually and/or collectively, on behalf of himself and all other Process Servers.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, ABC Legal Investors, Inc., ABC Legal Services, Inc., and/or ABC Legal Services, LLC are liable for the PAGA civil penalties under Labor Code §§ 558 and 1197.1 as “other person(s)” who caused the violations alleged herein. (See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 [“if there is evidence and a finding that a party *other than the employer* ‘violates, or causes of be violated’ the overtime laws (§ 558(a)), or ‘pays or causes to be paid to an employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties *regardless of the identity or business structure of the employer*”]; see also *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 [holding the same].)

All facts, claims, and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Process Servers. The facts, claims, and/or legal theories contained in this written notice are based on the information available at the time of this writing. Since Claimant’s investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories of liability discovered after the sending of this letter on behalf of himself and other current or former Process Servers against the Companies, individually and/or collectively, and/or other persons that may be discovered after the sending of this letter. Such other persons may include, but are not limited to,

those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Companies, individually and/or collectively, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Companies, individually and/or collectively, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained herein, and those who were acting within the authority and/or scope of the Companies, individually and/or collectively. Claimant reserves the right to revise these facts and/or add any new claims or legal theories by amending this written notice and/or by adding facts, claims, and/or legal theories to his civil complaint.

MISCLASSIFICATION AS INDEPENDENT CONTRACTOR

(Labor Code §§ 226.8, 2775, and 3353)

Pursuant to Labor Code § 226.8(a), it is unlawful for an employer to willfully misclassify an individual as an independent contractor. Moreover, Labor Code § 226.8(b) prohibits employers from “[c]harging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual’s employment...”

Where an employer has engaged in, or is engaging in, a pattern or practice of willfully misclassifying individuals as independent contractors, Labor Code § 226.8(c) imposes on the employer a civil penalty of no less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000), in addition to any other legally permitted penalties.

Labor Code § 2775 codifies the “ABC” test set forth in *Dynamex Operations W. Inc. v. Superior Court* (2018) 4 Cal.5th 903 to determine whether an individual is an employee or an independent contractor for purposes of the Labor Code and the IWC Wage Orders. Specifically, Labor Code § 2775 provides that, “a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor,” unless the hiring entity establishes that all of the following three conditions are satisfied:

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The person performs work that is outside the usual course of the hiring entity’s business.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

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Labor Code § 3353 further defines “independent contractor” to mean “any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.”

As set forth above, the Companies, individually and/or collectively, have a policy, practice, procedure, and/or guideline of willfully misclassifying Claimant and other Process Servers as independent contractors. Claimant and other Process Servers are employees for purposes of the Labor Code and IWC Wage Order No. 4 because the Companies, individually and/or collectively, retain control and direction over the performance of Process Servers’ work by controlling their work schedules and performance. The Companies, individually and/or collectively, did not permit Process Servers to use independent judgment. Process Servers also performed work that is within the usual course of the Companies’, individual and/or collective, business. Process Servers are also not independently engaged in process serving outside of their work with the Companies, individually and/or collectively. Consequently, the Companies, individually and/or collectively, are subject to a civil penalty of at least \$10,000, and up to \$25,000, for each violation of Labor Code § 226.8. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Process Servers to the extent permitted by law.

**FAILURE TO TIMELY PAY MINIMUM, REGULAR, OVERTIME,
AND/OR DOUBLE TIME WAGES**

(Labor Code §§ 204, 210, 226.2, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the “Minimum Wages” and “Hours and Days of Work” sections of IWC Wage Order No. 4-2001)

Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable on twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”].)

Pursuant to Labor Code § 226.2(a), employees compensated on a piece-rate basis “shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.” Labor Code § 226.2(a)(3)(A) further mandates:

Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:

(i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods

and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.

(ii) The applicable minimum wage.

The “Minimum Wages” section of IWC Wage Order No. 4-2001 further provides that “[e]very 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.”

Labor Code § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1198 states:

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.

Labor Code § 510(a), which codifies an employee’s right to overtime compensation, provides:

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.

The “Hours and Days of Work” and “Minimum Wages” sections of IWC Wage Order No. 4-2001 mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

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Labor Code § 1194(a) provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code § 558 provides that "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Companies, individually and/or collectively, have a policy, practice, procedure and/or guideline of failing to timely pay all minimum, regular, overtime, and/or double time wages to Claimant and, on information and belief, other Process Servers for all hours actually worked or time spent under the control of the Companies, individually and/or collectively, on the date designated in advance by the Companies as the regular pay day. For instance, the Companies, individually and/or collectively, did not compensate Claimant and other Process Servers for non-productive time, such as editing and printing documents, logging status reports for other employees, and other administrative tasks. The Companies, individually and/or collectively, also failed to separately compensate Claimant and other Process Servers at least minimum wage for rest periods. Additionally, the Companies, individually and/or collectively, failed to timely pay all overtime and/or double time wages to Claimant and other Process Servers for all hours worked in excess of eight (8) hours per day, twelve (12) hours per day, and/or forty (40) hours per week on the payday for the next regular payroll period. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Process Servers to the extent permitted by law.

FAILURE TO PROVIDE MEAL PERIODS AND/OR TIMELY PAY PREMIUM WAGES
(Labor Code §§ 204, 226.7, 512, and the "Meal Periods" section of IWC Wage Order No. 4-2001)

Section 512(a) of the Labor Code provides:

An employer may 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 may 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. (Emphasis added.)

In pertinent part, the “Meal Periods” section of IWC Wage Order No. 4-2001 states:

(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 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.

A meal period generally comports with the requirements of California law if the employee has at least 30-minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from “...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040 [internal citations omitted].)

Pursuant to 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, 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.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

As set forth above, the Companies, individually and/or collectively, failed to provide Claimant and, on information and belief, other Process Servers with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other Process Servers are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Process Servers to the extent permitted by law.

**FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
AND/OR TIMELY PAY PREMIUM WAGES**

(Labor Code §§ 204, 226.7, and the "Rest Periods" section of IWC Wage Order No. 4-2001)

The "Rest Periods" section of IWC Wage Order No. 4-2001 provides:

(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 of 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 (3 ½) 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. (Emphasis added.)

An employer has not authorized or permitted lawful off-duty rest periods unless the employer relieves its employees of any and all work-related duties and relinquishes all control over how its employees spend their time during rest periods. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

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In pertinent part, Labor Code § 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 workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Companies, individually and/or collectively, failed to authorize and permit Claimant and, on information and belief, other Process Servers to take an off-duty, uninterrupted 10-minute rest period for every four (4) hours worked or major fraction thereof. Therefore, Claimant and other Process Servers are entitled to receive one-hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of law on behalf of himself and all Process Servers to the extent allowed by law.

UNLAWFUL DEDUCTION OF WAGES

(Labor Code §§ 221, 224, and 225.5)

Labor Code § 221 provides, “[i]t 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.”

Employers are prohibited from making wage deductions except where authorized by law. Specifically, Labor Code § 224 provides that it is unlawful for an employer to make deductions from an employee's wages except where:

...the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when

a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.

California courts have consistently interpreted Labor Code § 224 to mean that deductions are unlawful if made to benefit the employer. (See *City of Oakland v. Hassey* (2008) 163 Cal.App.4th 1477, 1501 [lawful wage deductions are for the benefit of employee, not employer, citing 3 Op.Atty.Gen. 178, 3-27-44]; *Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302.) Furthermore, the California Division of Labor Standard Enforcement Policies and Interpretations Manual states, “Section 224 may not...be relied upon to allow an employer to deduct an amount from an employee’s pay which is for the use or benefit of the employer.” (DLSE Manual (Rev. 2009) § 11.3.3.)

For violations of Labor Code § 221, Labor Code § 225.5 imposes a civil penalty of \$50 for any initial violation and \$100 for each subsequent willful violation, plus 25 percent of the amount unlawfully withheld. This penalty is in addition to and entirely independent from any other penalty provided under Labor Code §§ 200-244 *et seq.*

As set forth above, the Companies, individually and/or collectively, unlawfully deducted wages paid to Claimant and other Process Servers by deducting their pay when their service of documents did not meet arbitrary standards set by the Companies and by failing to pay any expenses paid or incurred in connection with their work. These deductions were made for the sole benefit of the Companies, individually and/or collectively. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Process Servers to the extent permitted by law.

**FAILURE TO PAY ALL WAGES DUE AND OWING UPON SEPARATION OF
EMPLOYMENT AND/OR THE REQUIRED WAITING TIME PENALTIES**

(Labor Code §§ 201, 202, and 203)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Premium wages constitute wages under Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

Labor Code § 202 provides, in pertinent part:

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

Labor Code § 203(a) further states:

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 therefore is commenced; but the wages shall not continue for more than 30 days.

As discussed herein, the Companies, individually and/or collectively, violated these Labor Code sections by not timely paying to Claimant and other former Process Servers all minimum, regular, overtime, and/or double time wages, as well as meal and/or rest period premium wages, within the required time upon separation of their employment. The Companies, individually and/or collectively, also did not pay Claimant and, on information and belief, other former Process Servers the required waiting time penalties for the late payment of wages. Thus, the Companies, individually and/or collectively, violated California law. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of California law on behalf of himself and all former Process Servers to the extent allowed by law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and the “Records” section of IWC Wage Order No. 4-2001)

Labor Code § 226(a) states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer, ... and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

Labor Code § 226(h) further states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.”

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As set forth above, the Companies, individually and/or collectively, failed to furnish Claimant and other Process Servers with itemized wage statements as required by California law. Specifically, the Companies, individually and/or collectively, did not furnish Claimant with an itemized wage statement at any point during his employment. As a result, Claimant and other Process Servers were not informed of, for instance, their total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate, the gross wages earned, and the net wages earned. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the Labor Code on behalf of himself and all Process Servers to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

(Labor Code §§ 226, 1174, 1174.5, and the “Records” section of IWC Wage Order No. 4-2001)

Labor Code § 1174(c) requires every employer to “keep a recording showing the names and addresses of all employees employed...” Labor Code § 1174(d) further requires every person employing labor in California 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. These records 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 is further obliged under Labor Code § 226(b) to keep the information required by Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment.

The “Records” section of IWC Wage Order No. 4-2001 also provides 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, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay. The “Records” section of IWC Wage Order No. 4-2001 further provides when a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula must be provided to employees.

Labor Code § 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 § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

As set forth above, the Companies, individually and/or collectively, violated their record keeping requirements by failing to accurately record employee hours actually worked including, but not limited to, the Companies, individually and/or collectively, failing to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Moreover, Claimant and, on information and belief, other Process Servers were not provided an explanation of the applicable piece rate or incentive plan by the Companies, individually and/or collectively. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their violations of the law on behalf of himself and all Process Servers to the extent allowed by law.

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

(Labor Code § 2802)

Labor Code § 2802(a) provides, in pertinent part, "[a]n 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."

Labor Code § 2802(b) states, "[a]ll 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." Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, "[f]or 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." Consequently, Claimant will also request reimbursement of the attorney's fees incurred in pursuing this matter.

As set forth above, the Companies, individually and/or collectively, required Claimant and other Process Servers to use their personal cell phones and/or vehicles in the discharge of their job duties without adequate reimbursement. Moreover, Claimant and other Process Servers were required by the Companies, individually and/or collectively, to purchase office supplies and pay for printing services for which they were not fully reimbursed. Claimant will pursue all available remedies against the Companies, individually and/or collectively, for their Labor Code violations on behalf of himself and all Process Servers to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code §§ 210, 225.5, 226.3, 226.8(c), 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code § 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 221, Labor Code § 225.5 imposes a civil penalty of \$50 for any initial violation and \$100 for each subsequent willful violation, plus 25 percent of the amount unlawfully withheld.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Where an employer has engaged in or is engaging in a pattern or practice of willfully misclassifying individuals as independent contractors, Labor Code § 226.8(c) imposes on the employer a civil penalty of not less than ten thousand (\$10,000) and not more than twenty-five thousand dollars (\$25,000), in addition to any other penalties permitted by law.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

Labor Code § 558.1(a) further states that,

[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 221, 224, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, 2802, and relevant IWC Wage Orders.

As set forth above, the Companies, individually and/or collectively, violated the Labor Code and IWC Wage Order 4-2001 by, among other things, willfully misclassifying individuals as independent contractors; failing to timely pay all regular, minimum, and/or overtime wages; failing to provide legally compliant meal and/or rest periods and/or timely pay premium wages; unlawfully deducting wages; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to furnish accurate itemized wage statements; failing to maintain accurate records; and failing to reimburse for necessary business expenses, as required under the Labor Code and the applicable sections of IWC Wage Order 4-2001. As a result, the Companies, individually and/or collectively, are liable for civil penalties under Labor Code §§ 210, 225.5, 226.3, 226.8(c), 558, 558.1, 1174.5, 1197.1, and 2699(f). Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Companies' violations on behalf of himself and all other Process Servers to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, 2802(c) and 2698, *et seq.*)

Labor Code §§ 210, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, 2802(c) and 2698, *et seq.*, among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

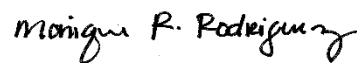
Pursuant to Labor Code § 2699(i), an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Companies, individually and/or collectively, are liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and he will continue to incur such costs as a result of the Companies', individual and/or collective, unlawful actions. Claimant will pursue all available remedies against the Companies, individually and/or collectively, including those provided by PAGA, on behalf of himself and other Process Servers to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Companies, individually and/or collectively, have violated the Labor Code and IWC Wage Order No. 4-2001, thereby depriving Claimant and other Process Servers of the rights and protections afforded to them. Specifically, Claimant contends that the Companies, individually and/or collectively, violated Labor Code §§ 201-203, 204, 210, 221, 224, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2775, 2802, 3353 and IWC Wage Order 4-2001. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Process Servers, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Process Servers, as permitted by the PAGA.

Best regards,



Monique R. Rodriguez