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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

11 ALEJANDRO JIMENEZ, as an individual
 12 on behalf of himself and all others similarly
 situated,

13 Plaintiff,

14 v.

15 GOLDEN STAR TECHNOLOGY, INC., a
 16 California corporation; DENNIS WANG, an
 individual; and DOES 1 through 50,
 inclusive,

17 Defendants.
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Case No.: 22STCV21510

**CLASS AND PAGA LAW
 ENFORCEMENT ACTION**

**COMPLAINT FOR DAMAGES,
 PENALTIES, RESTITUTION, AND
 INJUNCTIVE RELIEF**

1. Failure to Timely Pay Minimum, Regular, Overtime and/or Double Time Wages (Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and IWC Wage Order);
2. Failure to Provide Legally Compliant Meal Periods and/or Timely Pay Premium Wages (Labor Code §§ 204, 226.7, 512, 558, 1198, and IWC Wage Order);
3. Failure to Provide Legally Compliant Rest Periods and/or Timely Pay Premium Wages (Labor Code §§ 204, 226.7, 1198, and IWC Wage Order);
4. Failure to Timely Pay All Earned Wages During Employment (Labor Code §§ 204 and 210);
5. Failure to Timely Pay All Wages Due and

Owing Upon Separation of Employment
(Labor Code §§ 201-203);

6. Failure to Furnish Accurate Itemized
Wage Statements (Labor Code §§ 226,
226.3, 1198, and IWC Wage Order);
7. Failure to Maintain Accurate Records
(Labor Code §§ 226, 1174, 1174.5, 1198,
and IWC Wage Order);
8. Failure to Reimburse for Necessary
Business Expenses (Labor Code § 2802);
9. Breach of Contract for Failure to Timely
Pay All Commissions, Bonuses, and
Contractual Wages;
10. Conversion;
11. California's Unfair Competition Law
(Business & Professions Code §§ 17200
et seq.); and
12. Private Attorneys General Act of 2004
(Labor Code §§ 2698 *et seq.*)

JURY TRIAL DEMANDED

Plaintiff Alejandro Jimenez ("Plaintiff") brings this class action and Private Attorneys General Act ("PAGA") enforcement action on behalf of himself, and all others similarly situated against Defendants Golden Star Technology Inc., Dennis Wang, and DOES 1 through 50, inclusive (collectively, "Defendants" or "Golden Star") on the following grounds:

I. INTRODUCTION

1. This class action and PAGA enforcement action is brought by Plaintiff on behalf of himself and all other current and former exempt employees of Golden Star Technology, Inc. who performed work in California as a salesperson (i.e., sales executives and sales representatives) during the relevant time period ("Sales Employees").

2. Plaintiff contends that during the relevant time period, Defendants, individually and/or collectively, 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 Order No. 4-2001 to decrease their employment-related costs and increase their profits by, among other things:

- a. Misclassifying Sales Employees as exempt;
- b. Failing to timely pay all minimum, regular, overtime and/or double time wages;
- c. Failing to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods;
- d. Failing to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods;
- e. Failing to timely pay all earned wages during employment;
- f. Failing to pay all wages due and owing at the time of separation of employment and/or the required waiting time penalties;
- g. Failing to furnish accurate itemized wage statements;
- h. Failing to maintain accurate records;
- i. Failing to reimburse for necessary business expenses;
- j. Breach of contract for failure to timely pay all commission and contractual wages;
- k. Conversion;
- l. Engaging in unlawful, unfair, and/or fraudulent business practices; and
- m. Engaging in violations of the Private Attorneys General Act.

3. By and through this class action and PAGA enforcement action, Plaintiff seeks to recover all available remedies including, but not limited to, damages, statutory penalties, civil penalties, restitution, and injunctive relief, as well as attorneys’ fees and litigation costs, as provided under California law.

4. All allegations in this Complaint are based upon information and belief except those

1 allegations that pertain to Plaintiff and his counsel, which are based upon personal knowledge.
2 Each allegation in this Complaint has evidentiary support or is likely to have evidentiary support
3 after reasonable opportunity for further investigation and formal discovery.

4 **II. PARTIES**

5 **A. Plaintiff**

6 5. Plaintiff Alejandro Jimenez at all material times mentioned herein:

- 7 a. Was and is a resident of San Bernardino County in the state of California;
- 8 b. Was employed by Golden Star Technology, Inc. from about July 1, 2020
9 through and including November 19, 2021 as a Sales Executive;
- 10 c. Was to earn an annual salary plus commissions and bonuses;
- 11 d. Was to be paid on a bi-monthly basis;
- 12 e. Was improperly classified by Defendants, individually and/or collectively,
13 as an exempt employee for purposes of the Labor Code and applicable IWC
14 Wage Order;
- 15 f. Was not timely paid all minimum, regular, overtime, and/or double time
16 wages for all time actually worked or spent under the control of Defendants,
17 individually and/or collectively;
- 18 g. Was not provided with legally compliant meal periods and/or timely paid
19 premium wages for non-complaint meal periods;
- 20 h. Was not provided with legally compliant rest periods and/or timely paid
21 premium wages for non-complaint rest periods;
- 22 i. Was not timely paid all earned wages, including commissions, during
23 employment;
- 24 j. Was not timely paid all wages due and owing upon separation of
25 employment;
- 26 k. Was not paid the required waiting time penalties for late payment of his final
27 wages;
- 28 l. Was not furnished with accurate itemized wage statements;

- m. Contends his employment, time, and/or payroll records were not accurately maintained by Defendants, individually and/or collectively;
- n. Was not reimbursed for necessary work expenses;
- o. Was not timely paid all commissions and/or contractual wages;
- p. Was subject to Defendants', individual and/or collective, unlawful, unfair, and fraudulent business practices;
- q. Is a member of the class and sub-class, defined herein;
- r. Is an "aggrieved employee" within the meaning of Labor Code § 2699(c); and
- s. Has complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

B. Defendants

6. Defendant Golden Star Technology, Inc. is a California corporation that has its principal place of business in Cerritos, California. It is believed that Golden Star Technology, Inc. has a satellite office in Riverside, California. Golden Star Technology, Inc. is believed to be an IT Consultant and Solutions provider. Golden Star Technology, Inc. is believed to provide services throughout California.

7. Defendant Dennis Wang is a natural person who is believed to be the Chief Operating Officer of Golden Star Technology, Inc. Dennis Wang is believed to work out of Golden Star Technology, Inc.'s principal place of business in Cerritos, California. Dennis Wang is believed to be a person acting on behalf of Golden Star Technology, Inc. who violated the or caused the violations of law alleged in this Complaint. It is further believed that Dennis Wang exercised control over the wages, hours, and/or working conditions of Sales Employees throughout the relevant time period.

8. 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

1 and believes, and on that basis alleges, that each of the fictitious defendants has participated in the
2 acts and/or omissions alleged in this Complaint.

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

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

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

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

23 13. At all times mentioned herein, there was a unity of interest and ownership between
24 each defendant, including each fictitiously named defendant, such that all defendants acted as a
25 single employer of Plaintiff and all other Sales Employees.

26 14. At all times mentioned herein, each defendant, including each fictitiously named
27 defendant, exercised supervision and control over the wages, hours, and/or working conditions of
28 Plaintiff and all other Sales Employees, including, but not limited to, implementing standard

1 policies and procedures.

2 15. At all times mentioned herein, each defendant, including each fictitiously named
3 defendant, caused Sales Employees, including Plaintiff, to work and/or prevented Plaintiff and
4 other Sales Employees from working.

5 16. At all times mentioned herein, each defendant, including each fictitiously named
6 defendant, had control over Sales Employees.

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

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

11 **III. JURISDICTION AND VENUE**

12 19. This Court has jurisdiction over this action pursuant to California Code of Civil
13 Procedure (“Code of Civil Procedure”) § 410.10. Pursuant to Code of Civil Procedure § 382,
14 California Business and Professions Code (Business & Professions Code”) § 17203, and Labor
15 Code §§ 2698 *et seq.*, Plaintiff brings this action on behalf of himself and all other Sales
16 Employees.

17 20. This Court has personal jurisdiction over Defendants because Defendants conduct
18 business in the state of California and have caused injuries in the county of Los Angeles, as well
19 as throughout the state of California, through their acts, omissions, and violations of the Labor
20 Code and Business & Professions Code.

21 21. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
22 Procedure § 395(a). Defendants transact business in Los Angeles County and are otherwise within
23 this Court’s jurisdiction for purposes of service of process. The unlawful acts alleged herein have
24 a direct effect on Plaintiff and all other Sales Employees within the county of Los Angeles and
25 throughout the state of California.

26 22. Pursuant to rule 3.400 of the California Rules of Court, this case shall be deemed a
27 complex action because it is filed as a class action and involves specialized case management,
28 extensive discovery and evidence, difficult and/or novel issues, and is likely to require extensive

1 post-judgment supervision.

2 **IV. FACTUAL ALLEGATIONS**

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

5 24. Plaintiff worked as a Senior Account Executive for Defendants from approximately
6 July 1, 2020, through and including November 19, 2021. Plaintiff was generally responsible for
7 selling technology in the form of software or hardware to clients. Plaintiff's day to day activities
8 consisted of answering emails and phone calls; attending meetings with the co-owner of the
9 company, his sales team, and his supervisor, Dennis Wang; finding new business by networking
10 and researching online; speaking with engineers and other staff internally; and preparing and
11 delivering proposals. Plaintiff generally worked approximately 50 to 60 hours per week. Plaintiff
12 was to earn an annual salary of \$70,000 plus commissions and bonuses based on the written
13 "Commission & Bonus Agreement" Plaintiff had with Defendants. Plaintiff was to be paid on a
14 bi-monthly basis. A true and correct copy of Commission & Bonus Agreement is attached hereto
15 as **Exhibit 1** and incorporated herein by reference.

16 25. Plaintiff asserts that at all material times Defendants, individually and/or
17 collectively, have employed, and will continue to employ, several Sales Employees in Los
18 Angeles County and throughout the state of California.

19 26. Plaintiff asserts that all material times Defendants, individually and/or collectively,
20 exercised control over the wages, hours and/or working conditions of Plaintiff and all other Sales
21 Employees.

22 27. Plaintiff asserts that throughout the relevant time period Defendants, individually
23 and/or collectively, violated California law and/or otherwise caused California law to be violated.

24 28. Plaintiff contends that during the relevant time period he and all other Sales
25 Employees were subject to the same and/or similar policies, practices, procedures guidelines,
26 and/or culture described herein.

27 29. Plaintiff further asserts that at all relevant times he and all other Sales Employees
28 have suffered, and those currently employed will continue to suffer, the same and/or similar

violations of law described herein.

30. Plaintiff alleges that all material times he and all other Sales Employees regularly worked more than eight (8) hours a day and/or forty (40) hours in a workweek.

31. Plaintiff contends that at all relevant times he and all other Sales Employees earned an annual salary plus commissions and bonuses.

32. Plaintiff alleges that at all relevant times he and all other Sales Employees had a written compensation plan with Defendants, individually and/or collectively, that is the same or substantially similar to the "Commission & Bonus Agreement" between Plaintiff and Defendant (i.e., Exhibit 1). The written compensation plan outlined, for example, the Sales Employee's base salary, the eligibility to earn commissions, the calculation of commissions, payment of commissions, the eligibility to earn bonuses, and payment of bonuses.

33. Plaintiff asserts that throughout the relevant time period Defendants had a policy, practice, procedure, guideline, and/or culture of willfully misclassifying Plaintiff and all other Sales Employees as exempt employees.

34. Plaintiff alleges that during the relevant time period Sales Employees customarily spent more than half of their working time at Defendants' place of business (or at their regular workspace when working remotely) while engaged in work activities such as answering calls and emails from management, co-workers, and clients; attending meetings with management; attending remote meetings with clients; speaking with engineers and co-workers; researching and contacting potential new accounts; and working on proposals.

35. Plaintiff also alleges that at all material times Sales Employees regularly earned less than one- and one-half times the applicable minimum wage for all hours worked or spent under the control of Defendants during a given workweek and/or pay period.

36. Plaintiff contends that during the relevant time period less than half of Sales Employees' compensation comes from commissions.

37. Plaintiff further contends that throughout the relevant time period he and other Sales Employees did not perform work that directly related to the management of policies or general business operations of Defendants, individually and/or collectively, because they did not

determine budgets, margins of profit or quotas, they did not have the authority to hire or fire other employees, and they did not have control of their teams.

38. Plaintiff further contends that during the relevant time period he and other Sales Employees did not customarily and regularly use their discretion and independent judgment in performing their job more than half of the time because they did not perform specialized or technical work or tasks under general supervision. In fact, Plaintiff and other Sales Employees had regular weekly meetings with their teams and management. Management regularly reviewed and approved the work of Sales Employees, including proposals.

39. Plaintiff asserts that during the relevant time period Defendants, individually and/or collectively, had a policy, practice, procedure, guideline, and/or culture of failing to timely pay all minimum, regular, overtime, and/or double time wages for all hours worked or spent under the control of Defendants.

40. Plaintiff contends that at all material times, he and other Sales Employees were not paid all minimum, regular, overtime, and/or double time wages for all hours worked or spent under the control of Defendants, individually and/or collectively, as a result of being misclassified as exempt employees.

41. Plaintiff alleges that during the relevant time period he and other Sales Employees were not paid overtime and/or double time wages at their regular rate of pay despite working in excess of eight (8) hours per day and/or forty (40) hours per week and earning commissions and bonuses.

42. Plaintiff contends that during the relevant time period, Defendants, individually and/or collectively, had a policy, practice, procedure, guideline, and/or culture of underpaying earned commissions and bonuses to Sales Employees, such as Plaintiff. Sales Employees, including Plaintiff, regularly received commission and/or bonus payments that were less than the amounts outlined in their written compensation plan. For example, Plaintiff worked on a project that resulted in approximately \$16 million in gross revenue, but the commission payment he received reflected a commission of less than 3% of the gross profit.

43. Plaintiff alleges that during the relevant time period, Defendants, individually

1 and/or collectively, had a policy, practice, procedure, guideline, and/or culture of failing to
2 provide Sales Employees with the opportunity to take thirty (30) minute, off-duty, uninterrupted
3 meal periods that were free from Defendants', individual and/or collective, control when they
4 worked six (6) or more hours in a day. Plaintiff further asserts that Defendants, individually and/or
5 collectively, had a policy, practice, procedure, guideline, and/or culture of failing to provide Sales
6 Employees with the opportunity to take a second (30) minute, off-duty, uninterrupted meal period
7 that was free from Defendants', individual and/or collective, control when they worked ten (10)
8 or more hours in a day. Defendants, individually and/or collectively, did not have any specific
9 policies or procedures to ensure that Sales Employees were provided with the opportunity to take
10 lawful meal periods because they classified Sales Employees as exempt. Sales Employees, such
11 as Plaintiff, were not provided with the opportunity to take lawful meal periods because they were
12 regularly speaking with clients or engaged in other job duties during their meal periods or had to
13 be readily available to engage in work duties during their meal periods.

14 44. Defendants, individually and/or collectively, knew or should have known that Sales
15 Employees were not provided with the opportunity to take lawful meal periods due to their failure
16 to enforce any specific policies or procedures to ensure that Sales Employees were provided with
17 the opportunity to take lawful meal periods.

18 45. At all material times, Plaintiff contends that Defendants, individually and/or
19 collectively, had a policy, practice, procedure, guideline, and/or culture of not paying Sales
20 Employees one additional hour of pay at their regular rate of compensation for each workday a
21 lawful meal period was not provided because they wrongly classified Sales Employees as exempt
22 employees.

23 46. Plaintiff asserts that during the relevant time period, Defendants, individually and/or
24 collectively, had a policy, practice, procedure, guideline, and/or culture of failing to authorize and
25 permit Sales Employees to take a ten (10) minute, off-duty, uninterrupted rest period that was free
26 from Defendants', individual and/or collective, control for every four (4) hours worked or major
27 fraction thereof. Defendants, individually and/or collectively, did not have any specific procedures
28 to ensure that Sales Employees were authorized and permitted to take lawful rest periods because

1 they classified Sales Employees as exempt. Sales Employees, such as Plaintiff, were not
2 authorized and permitted to take lawful rest periods because they had to be readily available to
3 engage in work duties during their rest periods, including answering emails and phone calls.

4 47. Defendants, individually and/or collectively, knew or should have known that Sales
5 Employees were not authorized and permitted to take lawful rest periods due to their failure
6 enforce any specific policies or procedures to ensure that Sales Employees were provided with
7 the opportunity to take lawful rest periods.

8 48. Plaintiff contends that throughout the relevant time period, Defendants, individually
9 and/or collectively, had a policy, practice, procedure, guideline, and/or culture of not paying Sales
10 Employees one additional hour of pay at their regular rate of compensation for each workday a
11 lawful rest period was not provided as a result of their misclassification of Sales Employees.

12 49. Plaintiff alleges that during the relevant time period, Defendants, individually
13 and/or collectively, had a policy, practice, procedure, guideline, and/or culture of failing to timely
14 pay all earned wages, including commissions and bonuses during employment. Defendants,
15 individually and/or collectively, did not pay all earned wages at least twice per calendar month on
16 the days designated in advance as the regular pay day. Defendants, individually and/or
17 collectively, also did not pay all wages earned for labor in excess of the normal work period no
18 later than the payday for the next regular payroll period. Moreover, Defendants, individually
19 and/or collectively, did not pay all earned commissions and bonuses in the time and manner
20 outlined in the commission plan. For instance, Plaintiff asserts that Defendants, individually
21 and/or collectively, did not pay him and all other Sales Employees for all time worked or spent
22 under the control of the employer including, but not limited to, overtime, double time and/or
23 premium wages at their regular rate of pay. Additionally, Defendants, individually and/or
24 collectively, did not pay all earned commissions and bonuses as outlined in their compensation
25 plans. Instead, Defendants, individually and/or collectively, paid Sales Employees less than
26 outlined in the compensation plans.

27 50. Plaintiff contends that at all relevant times, Defendants, individually and/or
28 collectively, had a policy, practice, procedure, guideline, and/or culture of failing to timely pay

1 all wages due and owing upon separation of employment and/or the required waiting time
2 penalties. For example, despite being terminated by Defendants, individually and/or collectively,
3 on November 24, 2021, Plaintiff was not immediately paid all of his earned wages, including
4 earned commissions and bonuses. Plaintiff did not receive his final paycheck until December 7,
5 2021. However, Plaintiff's final paycheck did not include all earned wages, including
6 commissions and bonuses, or the required waiting time penalties. To date, Plaintiff has not
7 received all wages due and owing or the required waiting time penalties. Plaintiff alleges, on
8 information and belief, that other former Sales Employees were not timely paid all wages due and
9 owing upon separation of employment and/or the required waiting time penalties.

10 51. Plaintiff alleges that during the relevant time period Defendants, individually and/or
11 collectively, had a policy, practice, procedure, guideline, and/or culture of failing to furnish
12 accurate itemized wage statements to Sales Employees. Plaintiff asserts that the wage statements
13 Defendants, individually and/or collectively, furnished to Plaintiff and other Sales Employees did
14 not include the accurate amount of wages, commissions, and bonuses earned, including overtime
15 and premium wages, the actual total hours worked, all applicable hourly rates in effect during the
16 pay period and the corresponding number of hours worked at each hourly rate, the gross wages
17 actually earned, the net wages actually earned, the proper pay period information, and the proper
18 employer information.

19 52. Due to the incorrect and/or lack of information included on the wage statements
20 Defendants, individually and/or collectively, furnished to Sales Employees, Plaintiff and other
21 Sales Employees were, unable to promptly and easily determine, for instance, whether they were
22 properly paid all earned wages, commissions, and bonuses, the appropriate rate of pay during the
23 pay period, the corresponding pay period information, and the employer information, among other
24 things.

25 53. Plaintiff alleges that at all relevant times, Defendants, individually and/or
26 collectively, had a policy, practice, procedure, guideline, and/or culture of failing to maintain
27 accurate employment records. Defendants, individually and/or collectively, failed to institute any
28 time keeping procedures for Sales Employees. Plaintiff asserts that Defendants, individually

1 and/or collectively, failed to maintain accurate records because they did not keep record of the
2 actual hours worked or meal periods taken by Sales Employees. Defendants, individually and/or
3 collectively, also did not maintain accurate records of all wages, commissions, and bonuses earned
4 and paid. Defendants, individually and/or collectively, did not implement nor preserve a lawful
5 record-keeping system, including the wage statements furnished or a computer-generated report
6 showing the information that was included on the furnished wage statements.

7 54. Plaintiff alleges that at all material times, Defendants, individually and/or
8 collectively, had a policy, practice, procedure, guideline, and/or culture of failing to reimburse for
9 necessary work expenses. Sales Employees, including Plaintiff, were not reimbursed for a
10 reasonable percentage of personal cell phones, home internet and utilities, for offices supplies
11 such as paper and ink, photocopies, and other expenses incurred. This is true despite the fact that
12 Plaintiff and other Sales Employees worked remotely during the pandemic.

13 55. Plaintiff alleges that during the relevant time period, Defendants, individually
14 and/or collectively, had a policy, practice, procedure, guideline and/or culture of not timely paying
15 all commissions, bonuses and contractual wages as outlined in their compensation plan even
16 though Plaintiff and other Sales Employees met the requirements to earn their commissions,
17 bonuses and contractual wages. To date, Sales Employees have not received all of their earned
18 commissions, bonuses, and contractual wages from Defendants, individually and/or collectively.

19 56. As a result of the Defendants', individual and/or collective, policies, practices,
20 procedures, guidelines and/or culture described herein including, but not limited to, their
21 misclassification of Sales Employees, failure to timely pay all earned wages, commissions, and
22 bonuses, failure to provide meal and rest periods, and failure to reimburse for necessary work
23 expenses, Defendants, individually and/or collectively, engaged in unlawful, unfair, and
24 fraudulent business practices.

25 57. On March 21, 2022, Plaintiff submitted written notice to the California Labor and
26 Workforce Development Agency ("LWDA") and Golden Star Technology, Inc. as required by
27 the PAGA, informing them of Defendants' alleged violations of the Labor Code. A true and
28 correct copy of the March 21, 2022, written notice is attached hereto as **Exhibit 2** and is

1 incorporated herein by reference.

2 58. To date, more than sixty-five (65) days after submission of Plaintiff's written notice,
3 the LWDA has not provided notice of its intent to investigate Plaintiff's alleged violations of the
4 Labor Code.

5 59. Plaintiff believes that additional violations may be discovered and therefore reserves
6 his right to allege additional violations of the law as investigation and discovery warrants. In the
7 event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint
8 as necessary.

9 **V. CLASS ACTION DESIGNATION**

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

12 61. Plaintiff brings Causes of Action One through Eleven as class allegations pursuant
13 to Code of Civil Procedure § 382.

14 62. Plaintiff seeks to represent the following class and sub-class, which are defined as
15 follows:

16 **Sales Employee Class**

17 All current and former exempt employees of Golden Star Technology,
18 Inc. who performed work in California as salespersons (i.e., sales
19 executive, sales representative) and/or similar sales positions during
20 the period commencing on the date that is within four years prior to
21 the filing of this Complaint through and including the last day of trial
22 (hereinafter, the "Class Period"). To the extent that California Rules
23 of Court, Appendix I, Emergency Rule 9 and/or equitable tolling
24 operates to toll the claims by the Sales Employee Class against
25 Defendants, individually and/or collectively, the time period should
26 be adjusted accordingly.

27 **Waiting Time Sub-Class**

28 All former exempt employees of Golden Star Technology, Inc. who
performed work in California as salespersons (i.e., sales executive,
sales representative) and/or similar sales positions during the period
commencing on the date that is within three years prior to the filing
of this Complaint through and including the last day of trial. To the
extent that California Rules of Court, Appendix I, Emergency Rule 9
and/or equitable tolling operates to toll the claims by the Waiting

Time Sub-Class against Defendants, individually and/or collectively, the time period should be adjusted accordingly.

63. Members of the Class and/or Sub-class are all “employees” as the term is used in the Labor Code and relevant IWC Wage Order regulating wages, hours, and working conditions in the state of California.

64. **Reservation of Rights:** Pursuant to California Rule of Court, rule 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into Sub-Classes, and/or limitation to particular issues.

65. Causes of Action One through Eleven are appropriately suited for a class action pursuant to § 382 of the Code of Civil Procedure because the following requirements are met:

A. Numerosity

66. The members of the Sales Employee Class and/or Waiting Time Sub-Class (collectively “Class Members”) are sufficiently numerous to render the joinder of all their members impracticable. While Plaintiff has not yet determined the precise number of Class Members, Plaintiff is informed and believes that the Sales Employee Class and Waiting Time Sub-Class consist of over 50 individuals. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants’, individual and/or collective, time and payroll records and other personnel records.

B. Commonality and Predominance

67. Common questions of law and fact exist as to all class members and predominate over any questions affecting only individual members of the Sales Employee Class and/or Waiting Time Sub-Class. The common questions of law and fact that predominate include, but are not limited to:

- a. Whether Defendants misclassified Class Members as exempt employees;
- b. Whether Defendants failed to timely pay all earned wages to Class Members;
- c. Whether Defendants underpaid Class Members;
- d. Whether Defendants failed to provide Class Members with the opportunity to take lawful meal periods;

- e. Whether Defendants failed to authorize and permit Class Members to take lawful rest periods;
- f. Whether Defendants failed to timely pay premium wages for unlawful meal and rest periods;
- g. Whether Defendants failed to pay all commissions, bonuses and contractual wages to Class Members;
- h. Whether Defendants furnished Class Members with inaccurate non-itemized wage statements;
- i. Whether Defendants failed to maintain accurate employment records; and
- j. Whether Defendants engaged in fraudulent, unlawful, and/or unfair business practices.

C. Typicality

68. Plaintiff's claims are typical of the claims of all Class Members because Plaintiff and all Class Members' claims arise from the same event, practice, and/or course of conduct of Defendants. Plaintiff and all Class Members sustained injuries and damages as a result of Defendants', individual and/or collective, illegal policies, practices, and/or common course of conduct in violation of California law.

69. Furthermore, Plaintiff's claims under the Labor Code and IWC Wage Order No. 4-2001 are typical of the Class Members because Defendants', individual and/or collective, failure to comply with the provisions of California law entitles Plaintiff and each Class Member to the same and/or similar wages, benefits, and other relief. Accordingly, the legal theories underlying each cause of action are the same and the remedies sought by Plaintiff and all Class Members are the same.

D. Adequacy of Representation

70. Plaintiff has no known conflict of interest with the Class Members he seeks to represent. Plaintiff will adequately protect the interests of all Class Members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to him and putative Class Members.

71. Plaintiff retained attorneys who are experienced employment law litigators with significant wage and hour and class action experience.

E. Superiority of Class Action

72. Plaintiff believes a class action is a superior method of litigation for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable. Class action treatment will allow similarly situated employees to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

73. Plaintiff currently knows of no difficulty that might be encountered in the management of this suit, which would preclude maintenance as a class action.

VI. PRIVATE ATTORNEYS GENERAL ACT DESIGNATION

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

75. By and through this representative enforcement action, Plaintiff intends to represent the following group of aggrieved employees:

All current and former exempt employees of Golden Star Technology, Inc. who performed work in California as salespersons (i.e., sales executive, sales representative) and/or similar sales positions during the period commencing on the date that is within one year and sixty-five days prior to the filing of this Complaint through and including the last day of trial (hereinafter the "PAGA Period"). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims against Defendants, the PAGA Period should be adjusted accordingly.

76. Aggrieved employees are all "employees" as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

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

78. Pursuant to Labor Code §§ 2698 *et seq.*, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of

1 himself or herself and other current or former employees pursuant to the procedures specified in
2 Labor Code § 2699.3.

3 79. Pursuant to the PAGA all civil penalties recovered must be allocated seventy-five
4 percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant
5 to Labor Code § 2699(i).

6 80. During all, or a portion of, the one-year and sixty-five day period before Plaintiff
7 filed notice of his claims with LWDA, Defendants, individually and/or collectively, were
8 Plaintiff's and all other Sales Employees' employer or person acting on behalf of Sales
9 Employees' employer, either individually or as an officer, agent, or employee of another person,
10 within the meaning of Labor Code §§ 558(a) and 1197.1, who paid or caused to be paid to any
11 employee a wage less than the minimum fixed by California state law, and as such, is subject to
12 civil penalties for each underpaid employee, as well as liquidated damages pursuant to Labor Code
13 § 1194.2, and any applicable penalties imposed pursuant to Labor Code § 203.

14 81. Plaintiff is an "aggrieved employee" under the PAGA because he was employed by
15 the alleged violator, Defendants, individually and/or collectively, and experienced one or more of
16 the alleged violations committed against him and is therefore properly suited to represent the
17 interests of other Sales Employees. (See *Huff v. Securitas Security Services, USA, Inc.* (2018) 23
18 Cal.App.5th 745, 751, 761; *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519.)

19 82. Plaintiff alleges that all other Sales Employees are also "aggrieved employees"
20 under the PAGA as Defendants, individually and/or collectively, employed them and all Sales
21 Employees experienced one or more of the alleged violations outlined herein.

22 83. Plaintiff has exhausted his administrative remedies because he complied with the
23 notice requirements outlined in Labor Code § 2699.3. On March 21, 2022, Plaintiff submitted
24 written notice to the LWDA and Golden Star Technology, Inc. informing them of the Defendants'
25 alleged Labor Code violations pursuant to the PAGA. (See Exh. 2.) Pursuant to the PAGA, the
26 LWDA had sixty-five (65) days to provide notice of whether it intended to investigate the alleged
27 violations. To date, the LWDA has not provided notice of its intent to investigate the alleged
28 violations. Plaintiff, thus, has the right to pursue, and does pursue, the asserted claims under

1 PAGA in a representative capacity pursuant to Labor Code §§ 2698 *et seq.*

2 84. As set forth herein, Defendants, individually and/or collectively, have committed,
3 and continue to commit, numerous violations for which the Labor Code and IWC Wage Order
4 No. 4-2001 entitles Plaintiff, in his representative capacity, to recover, on behalf of himself, all
5 other Sales Employees, the state of California, and the general public, civil penalties as well as
6 attorneys' fees and costs from Defendants for the alleged violations, described herein.

7 85. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee
8 for the initial violation, and \$200 per pay period, per employee for each subsequent violation for
9 all Labor Code provisions for which a civil penalty is not specifically provided, including, but not
10 limited to, Labor Code §§ 201-203, 204, 223, 226(a), 226.7, 510, 512, 1174, 1194, 1197, 1197.1,
11 1198, and 2802. Plaintiff and other Sales Employees are entitled to, and therefore seek, the civil
12 penalties described in Labor Code § 2699(f) for the violations of law described herein.

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

17 87. Plaintiff expressly disclaims the recovery of any "amount sufficient to recover
18 underpaid wages" on behalf of himself and all other Sales Employees for the claims alleged under
19 the PAGA.

20 **VII. CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION**

22 **(By Plaintiff, individually and on behalf of the Sales Employee Class,**

23 **Against Defendants, including DOES 1-50)**

24 **FAILURE TO TIMELY PAY MINIMUM, REGULAR,**

25 **OVERTIME AND/OR DOUBLE TIME WAGES**

26 **[Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the "Minimum**
27 **Wages" and "Hours and Days of Work" sections of IWC Wage Order No. 4-2001]**

28 88. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all

1 paragraphs of this Complaint.

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

7 90. Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the
8 commission is the minimum wage to be paid to employees, and the payment of a lower wage than
9 the minimum so fixed is unlawful."

10 91. The "Minimum Wages" section of IWC Wage Order No. 4-2001 further provides
11 that "[e]very employer shall pay to each employee, on the established payday for the period
12 involved, not less than the applicable minimum wage for all hours worked in the payroll period,
13 whether the remuneration is measured by time, piece, commission, or otherwise."

14 92. Labor Code § 1197.1 provides:

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

22 93. Labor Code § 1198 states:

23 The maximum hours of work and the standard conditions of labor
24 fixed by the commission shall be the maximum hours of work and the
25 standard conditions of labor for employees. The employment of any
26 employee for longer hours than those fixed by the order or under
27 conditions of labor prohibited by the order is unlawful.

28 94. 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.

95. 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.)

96. 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.

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

98. 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.

99. 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 in addition to an amount sufficient to recover unpaid wages, and \$100 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages for each subsequent violation.

100. Plaintiff contends Defendants, individually and/or collectively, misclassified Sales Employees as exempt employees.

101. Plaintiff asserts that during relevant time period Defendants, individually and/or

collectively, had a policy, practice, procedure, guideline, and/or culture of failing to timely pay all minimum, regular, overtime, and/or double time wages for all hours worked or spent under the control of Defendants.

102. Plaintiff contends that at all material times, he and other Sales Employees were not paid all minimum, regular, overtime, and/or double time wages for all hours worked or spent under the control of Defendants, individually and/or collectively, as a result of being misclassified as exempt employees.

103. Plaintiff alleges that during the relevant time period he and other Sales Employees were not paid overtime and/or double time wages at their regular rate of pay despite working in excess of eight (8) hours per day and/or forty (40) hours per week and earning commissions and bonuses.

104. By virtue of Defendants', individual and/or collective, failure to properly compensate Plaintiff and all other Sales Employees all minimum, regular, overtime, and/or double time wages for all time worked and/or spent under the control of Defendants, individually and/or collectively, Sales Employees have suffered, and will continue to suffer, damages in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

105. Having received less than the legal minimum wage and/or applicable rate of compensation, Plaintiff and all other Sales Employees are entitled to, and now seek to recover all unpaid wages, penalties, and liquidated damages available under Labor Code § 210, 558, 1194.2, 1197.1, as well as interest, attorneys' fees and litigation costs pursuant to Labor Code §§ 218.5, 218.6, 1194, and Code of Civil Procedure § 1021.5.

106. Plaintiff, on behalf of himself and all other Sales Employees, requests further relief as described in the below prayer.

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SECOND CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the Sales Employee Class,

Against Defendants, including DOES 1-50)

FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS

AND/OR TIMELY PAY PREMIUM WAGES

**[Labor Code §§ 204, 226.7, 512, 558, 1198, and the “Meal Periods” section of
IWC Wage Order No. 4-2001]**

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

108. Labor Code § 512(a) mandates, “[a]n 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” and “[a]n 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.”

109. The “Meal Periods” section of IWC Wage Order No. 4-2001 states,
[n]o 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.
Furthermore, “[i]f 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.”

110. The “Meal Periods” section of IWC Wage Order No. 4-2001 also states,
[u]nless 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 meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

111. Labor Code § 226.7(b) states, “[a]n 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...” Labor Code § 226.7(c) further provides, “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

112. A meal period generally comports with the requirements under California law if the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) Additionally, “an employer may not undermine formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040 [citations omitted].)

113. 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.

114. 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 and payable in accordance with Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

115. 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 plus an amount sufficient to recover underpaid wages for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was

1 underpaid in addition to an amount sufficient to recover underpaid wages for each subsequent
2 violation.

3 116. Plaintiff contends Defendants, individually and/or collectively, misclassified Sales
4 Employees as exempt employees.

5 117. Plaintiff alleges that during the relevant time period, Defendants, individually
6 and/or collectively, had a policy, practice, procedure, guideline, and/or culture of failing to
7 provide Sales Employees with the opportunity to take thirty (30) minute, off-duty, uninterrupted
8 meal periods that were free from Defendants', individual and/or collective, control when they
9 worked six (6) or more hours in a day.

10 118. Plaintiff further asserts that Defendants, individually and/or collectively, had a
11 policy, practice, procedure, guideline, and/or culture of failing to provide Sales Employees with
12 the opportunity to take a second thirty (30) minute, off-duty, uninterrupted meal period that was
13 free from Defendants', individual and/or collective, control when they worked ten (10) or more
14 hours in a day. Defendants, individually and/or collectively, did not have any specific procedures
15 to ensure that Sales Employees were provided with the opportunity to take lawful meal periods
16 because they classified Sales Employees as exempt.

17 119. Sales Employees, such as Plaintiff, were not provided with the opportunity to take
18 lawful meal periods because they were regularly speaking with clients or engaged in other job
19 duties during their meal periods or had to be readily available to engage in work duties during
20 their meal periods.

21 120. Defendants, individually and/or collectively, knew or should have known that Sales
22 Employees were not provided with the opportunity to take lawful meal periods due to their failure
23 to enforce any specific policies or procedures to ensure that Sales Employees were provided with
24 the opportunity to take lawful meal periods.

25 121. At all material times, Plaintiff contends that Defendants, individually and/or
26 collectively, had a policy, practice, procedure, guideline, and/or culture of not paying Sales
27 Employees' one additional hour of pay at their regular rate of compensation for each workday a
28 lawful meal period was not provided because they wrongly classified Sales Employees as exempt

1 employees.

2 122. Plaintiff and other Sales Employees have suffered and will continue to suffer
3 damages in an amount which is presently unknown but will be ascertained according to proof at
4 trial.

5 123. Pursuant to Labor Code § 226.7(c) and IWC Wage Order No. 4-2001, Plaintiff and
6 all other Sales Employees are entitled to, and seek to, recover the full amount of unpaid premium
7 wages for non-compliant meal periods.

8 124. Pursuant to Labor Code § 558, Plaintiff and all other Sales Employees are entitled
9 to, and seek to, recover the penalty outlined in Labor Code § 558.

10 125. Pursuant to Labor Code § 218.6, Plaintiff and all other Sales Employees are entitled
11 to, and seek to, recover pre-judgment interest on the amount of premium wages owed.

12 126. Plaintiff, on behalf of himself and all other Sales Employees, is entitled to, and seeks
13 to recover reasonable attorneys' fees and costs as permitted by Labor Code § 218.5 and Code of
14 Civil Procedure § 1021.5.

15 127. Plaintiff on behalf of himself and all other Sales Employees, requests further relief
16 as described in the below prayer.

17 **THIRD CAUSE OF ACTION**

18 **(By Plaintiff, individually and on behalf of the Sales Employee Class,**

19 **Against Defendants, including DOES 1-50)**

20 **FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS**

21 **AND/OR TIMELY PAY PREMIUM WAGES**

22 **[Labor Code §§ 204, 226.7, 1198, and the "Rest Periods" section of**

23 **IWC Wage Order No. 4-2001]**

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

26 129. In pertinent part, Labor Code § 226.7 provides:

27 (b) An employer shall not require an employee to work during a
28 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.

130. The "Rest Periods" section of IWC Order No. 4-2001, states:

(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.)

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

132. 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.

133. 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 and payable in accordance with Labor Code § 204. (*Murphy, supra*,

40 Cal.4th at 1103-1114.)

134. Plaintiff alleges that Defendants, individually and/or collectively, misclassified Sales Employees as exempt employees.

135. Plaintiff asserts that during the relevant time period, Defendants, individually and/or collectively, had a policy, practice, procedure, guideline, and/or culture of failing to authorize and permit Sales Employees to take a ten (10) minute, off-duty, uninterrupted rest period that was free from Defendants', individual and/or collective, control for every four (4) hours worked or major fraction thereof. Defendants, individually and/or collectively, did not have any specific procedures to ensure that Sales Employees were authorized and permitted to take lawful rest periods because they classified Sales Employees as exempt. Sales Employees, such as Plaintiff, were not authorized and permitted to take lawful rest periods because they had to be readily available to engage in work duties during their rest periods, including answering emails and phone calls.

136. Defendants, individually and/or collectively, knew or should have known that Sales Employees were not authorized and permitted to take lawful rest periods due to their failure enforce any specific policies or procedures to ensure that Sales Employees were provided with the opportunity to take lawful rest periods.

137. Plaintiff contends that throughout the relevant time period, Defendants, individually and/or collectively, had a policy, practice, procedure, guideline, and/or culture of not paying Sales Employees one additional hour of pay at their regular rate of compensation for each workday a lawful rest period was not provided as a result of their misclassification of Sales Employees.

138. Plaintiff and other Sales Employees have suffered and will continue to suffer damages in an amount which is presently unknown but will be ascertained according to proof at trial.

139. Pursuant to Labor Code § 226.7(c) and IWC Wage Order No. 4-2001, Plaintiff and other Sales Employees are entitled to, and seek to, recover the full amount of unpaid premium wages for non-compliant rest periods.

140. Pursuant to Labor Code § 218.6, Plaintiff and other Sales Employees are entitled to, and seek to, recover pre-judgment interest on the amount of premium wages owed.

141. Plaintiff, on behalf of himself and Sales Employees, is entitled to, and seeks to recover reasonable attorneys' fees and costs as permitted by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

142. Plaintiff on behalf of himself and other Sales Employees, requests further relief as described in the below prayer.

FOURTH CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the Sales Employee Class,

Against Defendants, including DOES 1-50)

FAILURE TO TIMELY PAY ALL WAGES OWED DURING EMPLOYMENT

[Labor Code §§ 204 and 210]

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

144. 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).)

145. Labor Code § 210 provides 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.

146. At all material times, Plaintiff asserts that Defendants, individually and/or collectively, had a policy, practice, procedure, guideline and/or culture of not timely paying all earned wages, including commissions and bonuses during employment.

147. Defendants, individually and/or collectively, did not pay all earned wages at least twice per calendar month on the days designated in advance as the regular pay day. Defendants, individually and/or collectively, also did not pay all wages earned for labor in excess of the normal work period no later than the payday for the next regular payroll period. Moreover, Defendants, individually and/or collectively, did not pay all earned commissions and bonuses in the time and

manner outlined in the commission plan. For instance, Plaintiff asserts that Defendants, individually and/or collectively, did not pay him and all other Sales Employees for all time worked or spent under the control of the employer including, but not limited to, overtime, double time and/or premium wages at their regular rate of pay. Additionally, Defendants, individually and/or collectively, did not pay all earned commissions and bonuses as outlined in their compensation plans. Instead, Defendants, individually and/or collectively, paid Sales Employees less than outlined in the compensation plans.

148. As a result of Defendants', individual and/or collective, conduct, Plaintiffs and all other Sales Employees have suffered, and will continue to suffer, damages in an amount which is presently unknown, but which will be ascertained according to proof at trial.

149. Plaintiff and all other Sales Employees are entitled to and therefore seek the penalty outlined in Labor Code § 210 for the late payment of earned wages, commissions, and bonuses.

150. Plaintiff on behalf of himself and other Sales Employees, requests further relief as described in the below prayer.

FIFTH CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the Waiting Time Sub-Class,

Against Defendants, including DOES 1-50)

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

[Labor Code §§ 201-203]

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

152. 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."

153. Labor Code § 202, in pertinent part, states:

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.

154. Labor Code § 203(a), in pertinent part, mandates:

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.

155. Plaintiff contends that at all relevant times, Defendants, individually and/or collectively, had a policy, practice, procedure, guideline, and/or culture of failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties. For example, despite being terminated by Defendants, individually and/or collectively, on November 24, 2021, Plaintiff was not immediately paid all of his earned wages, including earned commissions and bonuses. Plaintiff did not receive his final paycheck until December 7, 2021. However, Plaintiff's final paycheck did not include all earned wages, including commissions and bonuses, or the required waiting time penalties. To date, Plaintiff has not received all wages due and owing or the required waiting time penalties.

156. Plaintiff alleges, on information and belief, that other former Sales Employees were not timely paid all wages due and owing upon separation of employment and/or the required waiting time penalties.

157. Due to Defendants', individual and/or collective, willful and deliberate conduct, Plaintiff and all other Sales Employees have suffered, and will continue to suffer, damages in an amount which is present unknown, but which will be ascertained according to proof at trial.

158. As a consequence of Defendants', individual and/or collective, willful and deliberate refusal to render such wages, Plaintiff and all other former Sales Employees are entitled to, and thus seek a maximum of thirty (30) days' wages at their daily rate of pay as a waiting time penalty, pursuant to Labor Code § 203.

159. Plaintiff, on behalf of himself and all other former Sales Employees, is also entitled to, and seeks to recover reasonable attorneys' fees and costs as permitted by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

1 160. Plaintiff, on behalf of himself and all other former Sales Employees, requests further
2 relief as described in the below prayer.

3 **SIXTH CAUSE OF ACTION**

4 **(By Plaintiff, individually and on behalf of the Sales Employee Class,**

5 **Against Defendants, including DOES 1-50)**

6 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

7 **[Labor Code §§ 226, 226.3, 1198, and the “Records” section of**

8 **IWC Wage Order No. 4-2001]**

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

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

12 Every employer shall, semimonthly or at the time of each payment of
13 wages, furnish each of his or her employees, either as detachable part
14 of the check, draft, or voucher paying the employee’s wages, or
15 separately when wages are paid by personal check or cash, an accurate
16 itemized statement in writing showing (1) gross wages earned, (2)
17 total hours worked by the employee... (5) net wages earned, (6) the
18 inclusive dates of the period for which the employee is paid... (7) the
19 name of the employee and only the last four digits of his or her social
20 security number or an employee identification number...(8) the name
21 and address of the legal entity that is the employer, and (9) all
22 applicable hourly rates in effect during each period and the
23 corresponding number of hours worked at each hourly rate by the
24 employee...

19 163. The “Records” section of IWC Wage Order No. 4-2001 states in pertinent part,

20 [e]very employer shall semimonthly or at the time of each payment of
21 wages furnish to each employee...an itemized wage statement in
22 writing showing (1) all deductions; (2) the inclusive dates of the
23 period for which the employee is paid; (3) the name of the employee
24 and the employee’s social security number; and (4) the name of the
25 employer, provided all deductions made on written orders of the
26 employee may be aggregate and shown as one item.

24 164. An injury occurs where the employer fails to provide accurate information and the
25 employee cannot “promptly and easily determine” the total number of hours worked or the
26 “applicable hourly rates in effect during the pay period and the corresponding number of hours
27 worked at each hourly rate.” (Labor Code § 226(a)(9)-(e)(2)(B)(i).)

28 165. Labor Code § 226(e)(2)(c) explains that the phrase “promptly and easily determine”

1 means that “a reasonable person would be able to readily ascertain the information without
2 reference to documents or information.”

3 166. Labor Code § 226(e)(1) further provides,

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

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

14 168. Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250.00
15 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per
16 employee for each violation in a subsequent citation.

17 169. Plaintiff alleges that during the relevant time period Defendants, individually and/or
18 collectively, had a policy, practice, procedure, guideline, and/or culture of failing to furnish
19 accurate itemized wage statements to Sales Employees. Plaintiff asserts that the wage statements
20 Defendants, individually and/or collectively, furnished to Plaintiff and other Sales Employees did
21 not include the accurate amount of wages, commissions, and bonuses earned, including overtime
22 and premium wages, the actual total hours worked, all applicable hourly rates in effect during the
23 pay period and the corresponding number of hours worked at each hourly rate, the gross wages
24 actually earned, the net wages actually earned, the proper pay period information, and the proper
25 employer information.

26 170. Due to the incorrect and/or lack of information included on the wage statements
27 Defendants, individually and/or collectively, furnished to Sales Employees, Plaintiff and other
28 Sales Employees were, unable to promptly and easily determine, for instance, whether they were
properly paid all earned wages, commissions, and bonuses, the appropriate rate of pay during the
pay period, the corresponding pay period information, and the employer information, among other
things.

171. Due to Defendants', individual and/or collective, conduct, Plaintiff and all other Sales Employees have suffered, and will continue to suffer, damages in an amount which is presently unknown, but which will be ascertained according to proof at trial.

172. Plaintiff and all other Sales Employees are entitled to, and now seek 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) as outlined by Labor Code section 226(e).

173. Pursuant to Labor Code § 226(h), Plaintiff and all other Sales Employees are entitled to and therefore seek injunctive relief in order to ensure that Defendants, individually and/or collectively, comply with Labor Code § 226(a).

174. Plaintiff and all other Sales Employees are entitled to, and now seek to, recover the civil penalties outlined in Labor Code § 226.3 for violations of Labor Code § 226(a).

175. Plaintiff and all other Sales Employees are also entitled to, and seek to recover, reasonable attorneys' fees and costs as provided under Labor Code § 226(e)(1) and (h) and Code of Civil Procedure § 1021.5.

176. Plaintiff, on behalf of himself and all other Sales Employees, requests further relief as described in the below prayer.

SEVENTH CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the Sales Employee Class,

Against Defendants, including DOES 1-50)

FAILURE TO MAINTAIN ACCURATE RECORDS

[Labor Code §§ 226, 1174, 1174.5, 1198, and the "Records" section of

IWC Wage Order No. 4-2001]

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

178. Labor Code § 1174 states:

Every person employing labor in this state shall ... keep, at a central

location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to ... employees employed at the respective plants or establishments.

179. 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... (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...

180. Pursuant to Labor Code § 226, employers are obligated to keep the information required by the section and afford current or former employees the right to inspect or copy records pertaining to their employment.

181. The "Records" section of IWC Wage Order No. 14-2001 states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period.

182. Labor Code § 1198 states,
[t]he 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.

183. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records.

184. Labor Code § 226(e)(1) further provides,
An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to

1 recover the greater of all actual damages or fifty dollars (\$50) for the
2 initial pay period in which a violation occurs and one hundred dollars
3 (\$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 attorneys' fees.

4 185. Plaintiff contends that at all relevant times, Defendants, individually and/or
5 collectively, had a policy, practice, procedure, guideline, and/or culture of failing to maintain
6 accurate employment records.

7 186. Defendants, individually and/or collectively, failed to establish any timekeeping
8 procedures for Sales Employees. Plaintiff asserts that Defendants, individually and/or
9 collectively, failed to maintain accurate records because they did not keep record of the actual
10 hours worked or meal periods taken by Sales Employees. Defendants, individually and/or
11 collectively, also did not maintain accurate records of all wages, commissions, and bonuses earned
12 and paid. Defendants, individually and/or collectively, did not implement nor preserve a lawful
13 record-keeping system, including the wage statements furnished or a computer-generated report
14 showing the information that was included on the furnished wage statements.

15 187. By and through Defendants', individual and/or collective, failure to maintain
16 accurate records, Plaintiff and all other Sales Employees were denied their legal right and
17 protected interest in having accurate and complete records available to them. Plaintiff and all other
18 Sales Employees have suffered, and will continue to suffer, damages in an amount which is
19 presently unknown, but which will be ascertained according to proof at trial.

20 188. Plaintiff and all other Sales Employees are entitled to, and now seek, damages and
21 penalties as outlined in Labor Code § 226(e)(1) and 1174.5.

22 189. Plaintiff, on behalf of himself and all other Sales Employees, is entitled to, and seeks
23 to recover reasonable attorneys' fees and costs as provided by Labor Code § 226(e)(1) and Code
24 of Civil Procedure § 1021.5.

25 190. Plaintiff, on behalf of himself and all other Sales Employees, requests further relief
26 as described in the below prayer.

27 ///

EIGHTH CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the Sales Employee Class,

Against Defendants, including Does 1-50)

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

[Labor Code § 2802]

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

192. 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.”

193. 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.”

194. 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.”

195. Plaintiff contends that at all material times, Defendants, individually and/or collectively, had a policy, practice, procedure, guideline, and/or culture of failing to reimburse for necessary work expenses.

196. Sales Employees, including Plaintiff, were not reimbursed for a reasonable percentage of personal cell phones, home internet and utilities, for offices supplies such as paper and ink, photocopies, and other expenses incurred as a direct consequence of the discharge of their duties.

197. Plaintiff and all other Sales Employees have suffered, and will continue to suffer, damages in an amount which is presently unknown, but which will be ascertained according to proof at trial.

1 198. Plaintiff and all other Sales Employees are entitled to seek, and now seek,
2 reimbursement of their expenses incurred, plus interest, and attorneys' fees and costs as permitted
3 by Labor Code § 2802.

4 199. Plaintiff, on behalf of himself and all other Sales Employees, are entitled to, and
5 now seek to recover, reasonable attorneys' fees and costs under Labor Code § 218.5 and Code of
6 Civil Procedure § 1021.5.

7 200. Plaintiff, on behalf of himself and all other Sales Employees, requests further relief
8 as described in the below prayer.

9 **NINTH CAUSE OF ACTION**

10 **(By Plaintiff, individually and on behalf of the Sales Employee Class,**

11 **Against Defendants, including Does 1-50)**

12 **BREACH OF CONTRACT FOR FAILURE TO TIMELY PAY ALL COMMISSION,**
13 **BONUSES, AND CONTRACTUAL WAGES**

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

16 202. Plaintiff alleges that at all relevant times he and all other Sales Employees had a
17 written compensation plan with Defendants, individually and/or collectively, that is the same or
18 substantially similar to the "Commission & Bonus Agreement" between Plaintiff and Defendant
19 (i.e., Exhibit 1). The written compensation plan outlined, for example, the Sales Employee's base
20 salary, the eligibility to earn commissions, the calculation of commissions, payment of
21 commissions, the eligibility to earn bonuses, and payment of bonuses.

22 203. During the relevant time period, Plaintiff and other Sales Employees met the
23 requirements to earn their commissions, bonuses and contractual wages and therefore performed
24 all obligations and conditions required by them in the compensation plan.

25 204. Defendants, individually and/or collectively, breached the compensation plan by
26 failing to timely and adequately pay all commissions, bonuses and contractual wages. For
27 instance, Plaintiff asserts that Defendants, individually and/or collectively, have a policy, practice,
28 procedure, guideline and/or culture of underpaying earned commissions and bonuses.

205. To date, Sales Employees have not received all of their earned commissions, bonuses, and contractual wages from Defendants, individually and/or collectively.

206. As a result of Defendants', individual and/or collective, breach(es), Plaintiff and all other Sales Employees have suffered and will continue to suffer damages in an amount which is presently unknown, but which will be ascertained according to proof at trial.

207. Plaintiff and all other Sales Employees are entitled to seek, and now seek, injunctive relief to remedy Defendants' unlawful and continuing conduct, and request an order requiring that Defendants, individually and/or collectively specifically perform the terms of the compensation plan by paying all commissions, bonuses, and contractual wages.

208. Plaintiff, on behalf of himself and all other Sales Employees, requests further relief as described in the below prayer.

TENTH CAUSE OF ACTION

(By Plaintiff, individually and on behalf of the Sales Employee Class,

Against Defendants, including DOES 1-50)

CONVERSION

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

210. Conversion is defined under California law as "the wrongful exercise over the property of another." (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.) In order to establish a claim of conversion, the following three elements must be met: "(1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." (*Ibid.*) Moreover, the plaintiff must not consent, either expressly or impliedly, to the taking, use, or disposition of his or her property by the defendant. (See *Farrington v. A. Teichert & Son, Inc.* (1943) 59 Cal.App.2d 468, 474.)

211. To demonstrate a conversion claim, "[i]t is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use." (*Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1507.) Thus, "any act of dominion wrongfully

1 exerted over the personal property of another inconsistent with the owner's rights thereto
2 constitutes conversion." (*Plummer v. Day/Eisenberg, LLP* (2010) 184 Cal.App.4th 38, 50.)

3 212. Plaintiff asserts that at all relevant times he and all other Sales Employees had a
4 written compensation plan with Defendants, individually and/or collectively, that outlines their
5 commissions and bonus structure.

6 213. Plaintiff contends that Defendants, individually and/or collectively, exercised
7 control over their commissions and/or bonuses.

8 214. Plaintiff asserts that he and all other Sales Employees, owned possessed, and/or had
9 a right to possess all earned commissions and/or bonuses.

10 215. Plaintiff contends that Defendants, individually and/or collectively, intentionally
11 and substantially interfered with the earned commissions and bonuses by taking possession of the
12 funds and/or preventing Sales Employees from having access to their earned commissions and/or
13 bonuses.

14 216. Plaintiff and all other Sales Employees did not consent to Defendants', individual
15 and/or collective, substantial interference with their commissions and/or bonuses.

16 217. Plaintiff alleges that he and all other Sales Employees were harmed, and continue
17 to be harmed, as a result of Defendants', individual and/or collective, intentional and substantial
18 interference with their commissions and/or bonuses, because Defendants, individually and/or
19 collectively, deprived Sales Employees of their earned bonuses and commissions as outlined in
20 their compensation plan.

21 218. Plaintiff contends that Defendants', individual and/or collective, conduct was a
22 substantial factor in causing Sales Employees harm. But for Defendants', individual and/or
23 collective, unlawful withholding and underpayment of commissions and bonuses, Sales
24 Employees, such as Plaintiff, would not have been deprived of all earned commissions and
25 bonuses.

26 219. Due to Defendants', individual and/or collective, conduct, Plaintiff and all other
27 Sales Employees have suffered, and will continue to suffer, damages in an amount which is
28 presently unknown, but which exceeds the jurisdictional limits of this Court and will be

1 ascertained according to proof at trial.

2 220. Plaintiff, on behalf of himself and all other Sales Employees, is entitled to, and seeks
3 to recover reasonable attorneys' fees and costs as provided by Code of Civil Procedure § 1021.5
4 and Civil Code § 3336.

5 221. Plaintiff, on behalf of himself and all other Sales Employees, requests further relief
6 as described in the below prayer.

7 **ELEVENTH CAUSE OF ACTION**

8 **(By Plaintiff, individually and on behalf of the Sales Employee Class,**

9 **Against Defendants, including DOES 1-50)**

10 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

11 **[Business & Professions Code §§ 17200 *et seq.*]**

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

14 223. California's Unfair Competition Law ("UCL") broadly prohibits "any unlawful,
15 unfair or fraudulent business act or practice."

16 224. A cause of action may be brought under the UCL if a practice violates some other
17 law. The "unlawful" prong of the UCL effectively deems a violation of the underlying law a per
18 se violation of Business & Professions Code §§ 17200 *et seq.* (*Cel-Tech Commc'ns, Inc. v. Los*
19 *Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.)

20 225. The "unfair" prong of the UCL does not require a practice to be specifically
21 proscribed by any law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134,
22 1143.) Pursuant to the California Supreme Court, the "unfair standard" is intentionally broad to
23 give maximum discretion to courts in prohibiting new schemes to defraud. (*Cel-Tech Commc'ns,*
24 *Inc.*, 20 Cal.4th at 180-181.)

25 226. Under the UCL, a "fraudulent" business act or practice is one where "members of
26 the public are likely to be deceived." (*Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36,
27 49.) A showing of actual deception, reasonable reliance, or damages is not required. (*Ibid.*) The
28 fraudulent prong may be used to attack the deceptive manner in which otherwise lawful contract

1 terms are presented to an individual. (*Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th
2 230, 253.) As such, even a true statement may be unlawful under section 17200 if it is “couched
3 in such a manner that is likely to mislead or deceive..., such as by failing to disclose other relevant
4 information.” (*Ibid.*)

5 227. As discussed herein, Defendants’ business practices violate all three prongs of
6 California’s UCL.

7 **A. Unlawful Business Practices**

8 228. As described herein, Defendants, individually and/or collectively, violated the
9 Labor Code by, among other things, misclassifying Sales Employees; failing to provide lawful
10 meal and rest periods; failing to compensate employees for all time worked or spent under the
11 control of Defendants; failing to timely pay all earned wages, commissions, and bonuses; failing
12 to timely pay all wages upon separation of employment; and failing to reimburse for necessary
13 business expenses. Defendants’, individual and/or collective, conduct is a per se violation of the
14 UCL. Defendants, individually and/or collectively, have thus engaged in unlawful business
15 practices.

16 **B. Unfair Business Practices**

17 229. Defendants, individually and/or collectively, intentionally avoided paying Plaintiff
18 and all other Sales Employees all earned wages, commissions, and bonuses and refused to
19 reimburse for business expenses in order to artificially lower cost of doing business, and thus,
20 undercut its competitors. Defendants’, individual and/or collective, conduct unfairly denied Sales
21 Employees their right to overtime wages and meal and rest periods. Sales Employees were also
22 denied access to accurate employment records in order to be able to ascertain whether they were
23 properly and adequately compensated.

24 **C. Fraudulent Business Practices**

25 230. Defendants, individually and/or collectively, acted fraudulently when it
26 misclassified Sales Employees as exempt and failed to pay all earned wages, commissions, and
27 bonuses. Defendants, individually and/or collectively, also regularly provided Sales Employees
28 with wage statements containing false and misleading information since Defendants, individually

and/or collective, did not record hours worked or when meal periods were taken.

231. As a direct and proximate result of Defendants', individual and/or collective, unlawful, unfair and fraudulent business practices, Plaintiff and all other Sales Employees have suffered injury-in-fact and have lost wages rightfully owed to them.

232. Through their unlawful, unfair, and fraudulent conduct, Defendants, individually and/or collectively, have been unjustly enriched by receiving and continuing to receive benefits and profits at the expense of Sales Employees. Therefore, pursuant to Business & Professions Code §§ 17200 *et seq.*, Defendants, individually and/or collectively, should be enjoined from this activity and made to disgorge all ill-gotten gains and restore Plaintiff and all other Sales Employees the wages wrongfully withheld from them.

233. Moreover, the unlawful, unfair and fraudulent conduct alleged herein has continued, and there is no indication that Defendants, individually and/or collectively, will refrain from such activity in the future. Plaintiff believes and alleges that if Defendants, individually and/or collectively, are not enjoined from the conduct described herein, Defendants, individually and/or collectively, will continue to violate California law at the expense of Sales Employees. Accordingly, Plaintiff requests that the Court issue a preliminary and permanent injunction against Defendants.

234. Plaintiff, on behalf of himself and all other Sales Employees, requests further relief as described in the below prayer.

TWELFTH CAUSE OF ACTION

(By Plaintiff, in his representative capacity, on behalf of all Aggrieved Employees,

Against Defendants, including Does 1-50)

THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code §§ 2698 *et seq.*]

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

236. Plaintiff, in his representative capacity on behalf of himself and all other Sales Employees, is entitled to and thus seeks to recover civil penalties through a representative law

1 enforcement action based on violations of the following Labor Code and/or IWC Wage Order No.
2 4-2001 provisions:

- 3 a. Failure to timely pay all minimum, regular, overtime and/or double time
4 wages in violation of Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197,
5 1197.1, 1198, and the “Minimum Wages” and “Hours and Days of Work”
6 sections IWC Wage Order No. 4-2001;
- 7 b. Failure to provide legally compliant meal periods and/or timely pay premium
8 wages in violation of Labor Code §§ 204, 210, 226.7, 512, 558, 1198, and
9 the “Meal Periods” section of IWC Wage Order No. 4-2001;
- 10 c. Failure to provide legally compliant rest periods and/or timely pay premium
11 wages in violation of Labor Code §§ 204, 210, 226.7, 1198, and the “Rest
12 Periods” section of IWC Wage Order No. 4-2001;
- 13 d. Failure to timely pay all wages, commissions, and bonuses during
14 employment in violation of Labor Code §§ 204 and 210;
- 15 e. Secretly underpaying wages in violation of Labor Code §§ 223 and 225.5;
- 16 f. Failure to timely pay all wages due and owing at the time of separation and/or
17 the required waiting time penalties in violation of Labor Code §§ 201-203;
- 18 g. Failure to furnish accurate itemized wage statements in violation of Labor
19 Code §§ 226, 226.3, and the “Records” section of IWC Wage Order No. 4-
20 2001;
- 21 h. Failure to maintain accurate records in violation of Labor Code §§ 226,
22 226.3, 1174, 1174.5, and the “Records” section of IWC Wage Order No. 4-
23 2001; and
- 24 i. Failure to reimburse for necessary business expenses in violation of Labor
25 Code § 2802.

26 237. Labor Code § 210 provides that any person who fails to pay wages as provided in
27 Labor Code §§ 201.3, 203, 204, 204(b), 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a
28 civil penalty of \$100 for any initial violation for each failure to pay each employee and for each

1 subsequent violation, or any willful or intentional violation \$200 for each failure to pay each
2 employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff,
3 in his representative capacity on behalf of himself and all other Sales Employees, is entitled to,
4 and therefore seeks, the civil penalty imposed by Labor Code § 210.

5 238. Labor Code § 225.5 provides that “every person who unlawfully withholds wages
6 due to any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil
7 penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay
8 each employee. (b) For each subsequent violation, or any willful or intentional violation, two
9 hundred dollars (\$200) for each failure to pay each employee, plus twenty-five percent (25%) of
10 the amount unlawfully withheld.” Plaintiff, in his representative capacity on behalf of himself and
11 all other Sales Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor
12 Code § 225.5.

13 239. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation for
14 an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
15 the employer fails to provide the employee a wage deduction statement or fails to keep the records
16 required in section 226(a), this civil penalty in addition to any other penalty provided by law.
17 Plaintiff, in his representative capacity on behalf of himself and all other Sales Employees, is
18 entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 226.3.

19 240. For violations of Labor Code §§ 510 and 512, in addition to any other recovery
20 provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each
21 underpaid employee for the initial violation and \$100 per pay period for each underpaid employee
22 for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any
23 provision regulating hours and days of work in any order of the IWC. Plaintiff, in his
24 representative capacity on behalf of himself and all other Sales Employees, is entitled to, and
25 therefore seeks, the civil penalty imposed by Labor Code § 558.

26 241. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to
27 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of
28 \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code §

2699 for a violation of Labor Code § 1174(d). Plaintiff, in his representative capacity on behalf of himself and all other Sales Employees, is entitled to, and therefore seeks, the civil penalty imposed by § 1174.5.

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

243. 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 §§ 201-203, 204, 223, 226(a), 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, and 2802. Plaintiff, in his representative capacity on behalf of himself and all other Sales Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 2699(f).

244. 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 Sales Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

245. Plaintiff, in his representative capacity on behalf of himself and all Sales Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

246. Plaintiff, in his representative capacity on behalf of himself and all other Sales Employees, requests further relief as described in the below prayer for relief.

VIII. PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendants, individually and/or collectively, in favor of the class action and PAGA enforcement action as follows:

a. For an order determining that this action may be maintained as a class action

- 1 with the named Plaintiff as the class representative;
- 2 b. For the attorneys for Plaintiff to be named as class counsel;
- 3 c. For all wages and benefits due to Plaintiff and other Sales Employees
- 4 pursuant to California law;
- 5 d. For all minimum, regular, overtime, and/or double time wages pursuant to
- 6 Labor Code §§ 510, 558, 1194, 1197.1, and/or other applicable law;
- 7 e. For premium wages pursuant to Labor Code § 226.7 and/or other applicable
- 8 law;
- 9 f. For waiting time penalties pursuant to Labor Code § 203 and/or other
- 10 applicable law;
- 11 g. For damages pursuant to Labor Code §§ 226(e)(1), Civil Code § 3281, and/or
- 12 other applicable law;
- 13 h. For liquidated damages pursuant to Labor Code §§ 1194.2, 1197.1, and/or
- 14 other applicable law;
- 15 i. For any and all penalties available for the Labor Code and IWC Wage Order
- 16 No. 4-2001 violations alleged herein, including penalties under Labor Code
- 17 §§ 203, 210, 225.5, 226(e)(1), 226.3, 558, 1174.5, 1197.1, 2699(f), and/or
- 18 other applicable law;
- 19 j. For an order determining that Plaintiff is entitled to recover a civil penalty of
- 20 \$100 for each aggrieved employee per pay period for the initial violation and
- 21 \$200 for each aggrieved employee per pay period for each subsequent
- 22 violation as provided in Labor Code § 2699(f);
- 23 k. For injunctive relief, pursuant to Labor Code § 226(h), Business &
- 24 Professions Code § 17203, and/or other applicable law.
- 25 l. For restitution for Defendants', individual and/or collective, unfair, unlawful,
- 26 and/or fraudulent business practices as provided by Business & Professions
- 27 Code §§ 17200 *et seq.*;
- 28 m. For an order imposing a constructive trust upon Defendants, individually

and/or collectively, to compel them to transfer wages that have been wrongfully obtained and held by Defendants, individually and/or collectively, to unpaid employees;

- n. For an accounting to determine all money wrongfully obtained and held by Defendants, individually and/or collectively;
- o. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 210, 218.5, 226(e)(1), 226(h), 1194(a), 2699(g)(1), Civil Code § 3336, Code of Civil Procedure § 1021.5, the “common fund” theory, the “substantial benefit” theory, the “catalyst” theory, and/or other applicable law.
- p. For a declaratory judgment that Defendants, individually and/or collectively, violated Labor Code §§ 201-203, 204, 223, 226(a), 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, and 2802; Business & Professions Code §§ 17200 *et seq.*; and the “Hours and Days of Work,” “Minimum Wages,” “Records,” “Meal Periods,” and “Rest Periods” sections of IWC Wage order No. 4-2001;
- q. For pre- and post- judgment interest as provided under California law;
- r. For appropriate equitable relief pursuant to California law; and
- s. For any other further relief as this Court deems proper and just.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues triable to a jury.

Dated: July 1, 2022

GRAHAMHOLLIS APC

By: Monique R. Rodriguez
GRAHAM S.P. HOLLIS
VILMARIE CORDERO
HALI M. ANDERSON
MONIQUE R. RODRIGUEZ
Attorneys for Plaintiff Alejandro Jimenez

EXHIBIT 1



COMMISSION & BONUS AGREEMENT

This Commission & Bonus Agreement ("Agreement") is entered into by and between Golden Star Technology, Inc. ("GST") and Alex Jimenez ("Employee") (collectively the "Parties") as of July 1, 2020. In consideration of the promises set forth in this Agreement, and Employee's employment with GST, the Parties agree as follows:

1. Position. Employee will be employed by GST as exempt outside sales employee in this position.
2. Duties.
 - 2.1 Employee's primary purpose is to perform sales activities including quotes, processing orders, business development, and all other related sales activities (the "Sale" or "Sales") for GST.
 - 2.2 Employee will customarily and regularly spend significantly more than half of his/her working time away from GST's places of business and away from any Employee home office selling items and/or obtaining orders and/or contracts for GST's products and/or services.
 - 2.3 Employee will loyally, conscientiously, and professionally perform all duties and responsibilities of Employee's position, as well as any other duties and responsibilities reasonably assigned by GST.
 - 2.4 Employee will strictly comply with all applicable laws, regulations, and rules in connection with all such activities.
 - 2.5 Employee will also strictly comply with all GST's rules, policies, procedures, regulations and guidelines, including but not limited to those contained in GST's Employee Handbook.
 - 2.6 Except as specifically authorized in this agreement, Employee will have no right or authority, at any time, to make any contract or binding promise of any nature on behalf of GST, without the express written consent of GST.
3. Base Salary. Employee will earn an annualized base salary of \$70,000, less applicable withholdings (the "Base Salary") in this position. The Base Salary will be paid on a bi-monthly basis according to GST's regular payroll practices.
4. Commissions. Employee will be eligible to earn commissions for Sales on accounts assigned in writing by GST to Employee pursuant to the following terms and conditions set forth below:
 - 4.1 Earning of Commissions. Employee will be eligible to earn a commission only when GST determines, in its sole discretion, that all of the following conditions are fully satisfied:
 - 4.1.1. Employee performs all the work necessary to ensure the Sale is developed, made, processed, completed, and paid (other than minor administrative work that may be performed by other non-sales employees);

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Employee's Initials



- 4.1.2. a customer Purchase Order is provided for the Sale;
 - 4.1.3. the Sale is approved by GST; and
 - 4.1.4. a proper GST invoice is issued on the Sale; however,
 - 4.1.5. Notwithstanding the provisions set forth above, Employee will not earn commissions on any Sale that is secured through any fraud, misrepresentation, and/or illegal conduct committed by Employee and/or any other person.
- 4.2 Calculation of Commission. For commissions earned by Employee pursuant to Section 4.1 of this Agreement, GST will pay Employee as follows:
- You will earn commission rate of 3.0%.
- 4.3 Definition of Gross Profit. As used herein, Gross Profit is the Sales price of the product and/or services, less the following deductions:
- 4.3.1. Actual cost of hardware: GST's purchase price + freight + any miscellaneous fees from supplier;
 - 4.3.2. Actual cost of labor: 70% of service income for GST in-house labor + any outside contractor labor + miscellaneous supply materials + any associated labor costs;
 - 4.3.3. Actual cost of Return: loss of profit + any restocking fee;
 - 4.3.4. Miscellaneous expense: Freight in/out + credit card discount charges + miscellaneous materials + transactions/financial fees; and
 - 4.3.5. All additional costs or fees items that directly impact the revenue and cost of the Sales, business, transactions, and/or account, as determined by GST.
- 4.4 Payment of Commission. Since commissions cannot be calculated until at least 21 days after the close of each calendar month, commission payments for one calendar month will be made on the second payday of the next calendar month in accordance with GST's regular payroll practices. GST will make appropriate deductions required or authorized by law from said payments.
- 4.5 Advances of Commissions. Any advances that exceed the actual amount of commissions earned by Employee will be fully recoverable, as GST deems appropriate, from any subsequent commissions earned by and/or sums payable to Employee, including from Employee's final paycheck, in accordance with applicable law.

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Employee's Initials



- 4.6 Modification of Commissions. GST may, in its sole discretion, change the commission rates set forth in this Agreement at any time on a prospective basis, but no such change will affect any Sale that was invoiced as of the date the change is announced.
- 4.7 Overpayments of Commission. GST shall have the right to audit commissions and other payments made to Employee, and to reduce Employee's commission account by the amount of any prior overpayments made to Employee. Employee hereby authorizes GST to make such adjustments. Employee shall be obligated to repay GST for overpayment balances that remain outstanding after Employee's separation of employment from GST for any reason, including from Employee's final paycheck, in accordance with applicable law.
- 4.8 Commissions on Separation of Employment. After Employee's separation of employment from GST for any reason, GST will only pay commissions to Employee that were earned, as defined above in 4.1, up to the day of the Employee's separation from GST. GST will pay commissions to Employee that were earned within 30 days of Employee's separation. Unless Employee makes other arrangements in writing in advance, any payments to Employee under this section will be sent by regular U.S. Mail to Employee's last known address on file with GST.
5. Bonus.
- 5.1 Earning of Bonus.
- 5.1.1. Employee may be eligible to earn a bonus based on Employee's performance (the "Bonus") as set forth below;
- 5.1.2. If Employee achieves his/her Gross Profit quota of \$400,000, Employee will earn a Bonus of \$5,000, less applicable withholdings;
- 5.1.3. In order to be eligible to earn the Bonus, Employee must be a current employee of GST as of February 1 of the following year in which the work was performed; for example, for work performed in 2020, Employee must be a current employee of GST as of February 1, 2021 to be eligible to earn a 2020 bonus.
- 5.1.4. However, Employee is not eligible to earn any Bonus (such as spiffs, rebates, promotions, marketing funds, or miscellaneous bonuses) based on vendor or supplier.
- 5.2 Payment of Bonus. Since bonuses cannot be calculated until February 1 of the following year, Bonus payments for one calendar year will be made on the first pay day after February 1 of the following year in accordance with GST's regular payroll practices; for example, the bonus earned for work performed in 2020 will be paid on the first payday after February 1, 2021.

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Employee's Initials



6. AT WILL EMPLOYMENT. THIS AGREEMENT DOES NOT ALTER, MODIFY, OR RESCIND EMPLOYEE'S AT WILL EMPLOYMENT STATUS WITH GST. EMPLOYEE'S EMPLOYMENT WITH GST CAN BE TERMINATED WITH OR WITHOUT CAUSE AND/OR WITH OR WITHOUT ADVANCE NOTICE. NO EMPLOYEE OR REPRESENTATIVE OF GST CAN MODIFY EMPLOYEE'S AT WILL EMPLOYMENT EXCEPT BY A WRITTEN AGREEMENT SIGNED BY EMPLOYEE AND THE CEO OF GST. THIS CONSTITUTES AN INTEGRATED AGREEMENT WITH RESPECT TO THE AT WILL NATURE OF THE EMPLOYMENT RELATIONSHIP, AND THERE MAY BE NO IMPLIED OR ORAL AGREEMENTS THAT IN ANY WAY MODIFY THIS AT WILL EMPLOYMENT POLICY.

Alex Jimenez

Employee's Printed Name

Alex Jimenez

Employee's Signature

6/1/2020

Date

Alice Ramos

Authorized GST Personnel Printed Name

[Signature]

Authorized GST Personnel Signature

6/1/2020

Date

AJ

Employee's Initials

EXHIBIT 2

March 21, 2022

Attorneys at Law

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San Diego, California 92103
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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)

Golden Star Technology, Inc.
12881 166th St.
Cerritos, CA 90703-2103

Golden Star Technology, Inc.
c/o Jia Peir Wang, Agent for Service Of Process
16722 Coral Cay Lane
Huntington Beach, CA 92649

**Re: Alejandro Jimenez's PAGA Claims Against Golden Star
Technology, Inc.**

Dear California Labor and Workforce Development Agency, and Golden Star Technology, Inc.:

Please be advised that Alejandro Jimenez ("Claimant") has retained our firm, Graham**Hollis** APC, to represent him for various claims against Golden Star Technology, Inc. (the "Company").

Please be advised that this letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Company committed against him and all other current or former exempt employees of the Company who performed work in California as Sales Persons (i.e., sales executives and sales representatives) during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support the 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 current or former exempt employees of the Company who performed work in California as Sales Persons (i.e., sales executives and

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

David Lin

Erik Dos Santos

Monique Rodriguez

Nora Steinhagen

Alyssa Smith

Allison Schubert

Dustin S. Delp

Alex Kuner

*Provisionally Licensed Lawyer

sales representatives) during the relevant time period¹ (referred to herein as “Sales Persons”). All Sales Persons, 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 Sales Persons are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Golden Star Technology, Inc. is a California corporation that has its principal place of business in Cerritos, California. Golden Star Technology, Inc. is an IT Consultant/Solutions Provider.

Claimant was employed by the Company as a Senior Account Executive from approximately July 1, 2020 to November 19, 2021. During his employment, Claimant typically worked between 50 to 60 hours per week. Claimant was responsible for selling technology in the form of software or hardware to clients. Claimant’s day to day activities consisted of answering emails and phone calls, attending meetings with the co-owner of the Company, his sales team, and his supervisor, finding new business by networking and researching online, speaking with engineers and other staff internally, and preparing and delivering proposals, among other things.

Claimant was to be paid \$70,000 a year, plus commission. Claimant had to meet certain metrics to receive his commission. Claimant was to be paid his salary twice per month during his employment with the Company. At all relevant times, the Company improperly classified Claimant as an exempt employee. 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, guidelines, and/or culture of the Company, applicable to Claimant were also applicable to all other Sales Persons throughout the relevant time period. Claimant further contends, based on information and belief, that he and all other Sales Persons suffered, and will continue to suffer, the same and/or similar violations of law described herein. Furthermore, Claimant contends that the Company is liable for the claims asserted herein since at all relevant times it exercised control over the wages, hours and/or working conditions of all Sales Persons, including Claimant; caused Sales Persons to work and/or prevented Sales Persons from working; and had control over Sales Persons.

Claimant alleges that the Company willfully misclassified Claimant and other Sales Persons as exempt employees. As a direct result of the Company’s scheme of purposefully misclassifying Claimant and other Sales Persons as exempt employees, the Company denied, and continues to deny, Claimant and other Sales Persons the specific rights afforded to them under the Labor Code and IWC Wage Order No. 4-2001. Specifically, the Company failed, and continues to fail, to timely pay all minimum, regular, and/or overtime wages to all Sales Persons, including Claimant; failed, and continues to fail, to pay commission wages designated by contract; failed and continues to fail to provide Claimant and other Sales Persons with meal and/or rest periods and/or timely pay them premium wages; failed and continues to fail to timely pay Claimant and other Sales Persons all wages and commissions due and owing upon separation of employment and/or pay the required waiting time penalties; failed, and continues to fail, to provide all Sales

¹ Relevant time period refers to the date that is one year prior to the date of this notice through and including the present date.

Persons, including Claimant, with accurate itemized wage statements; failed, and continues to fail, to maintain accurate employment records; and failed, and continues to fail, to reimburse Claimant and other Sales Persons for necessary business expenses.

Claimant alleges during the relevant time period the Company had a policy, practice, procedure, guideline, and/or culture of willfully misclassifying Sales Persons, including Claimant, as exempt. The Company will likely contend that Sales Persons, such as Claimant, meet the requirements for an exemption, including the outside or inside sales exemption. However, the Company will be unable to show that Claimant and all other Sales Persons meet the requirements of any exemption, including that of an outside sales person. For instance, Sales Persons, such as Claimant, customarily spent more than half of their working time at the Company's place of business while engaged in activities, such as answering emails and phone calls, attending meetings with the co-owner of the Company and his supervisor, and speaking with engineers and other staff internally. Additionally, less than half of the Sales Persons' compensation is derived from commissions. Further, Sales Persons regularly earned less than one and one half times the applicable minimum wage for all hours worked during a workweek and/or pay period. Therefore, the Company's policy, practice, procedure and/or guideline of classifying Sales Persons as "exempt" is in violation of California law.

Claimant asserts that during the relevant time period the Company had a policy, practice, procedure, guideline, and/or culture of not timely paying Sales Persons all minimum, regular, overtime, and/or double time wages for all time actually worked or spent under the control of the Company on the day designated in advance by the Company as the regular payday for work performed during the pay period. Claimant and other Sales Persons were paid an annual salary plus commission. However, Claimant and other Sales Agents did not earn at least minimum wages for all hours worked or time spent under the control of the Company. Furthermore, Claimant and, on information and belief, other Sales Persons regularly worked in excess of eight (8) hours in a workday and sometimes in excess of twelve (12) hours a day, and typically worked in excess of forty (40) hours in a workweek. Despite working in excess of eight (8) hours in a work day and/or forty (40) hours in a workweek, Sales Persons, such as Claimant were not paid overtime and/or double time wages at their regular rate of pay. Thus, Claimant contends that he and other Sales Persons 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 Company, in violation of California law.

Claimant alleges that the Company has a policy, practice, procedure, guideline and/or culture of secretly underpaying earned commissions to Claimant and other Sales Persons. For instance, Sales Persons, including Claimant, received lower commissions than agreed to in their compensation plans. Claimant's "Commission & Bonus Agreement" with the Company provided that Claimant would earn a commission rate of 3%. This was to be based on the Gross Profit in Sales less certain expenses. Though Claimant met the metrics required of him to earn his commission, the Company, on information and belief, underpaid Claimant's earned commissions. Further, the Company has failed to pay Claimant, and on information and belief other Sales Persons, all commissions earned during employment. Therefore, the Company has secretly underpaid Claimant and other Sales Persons in violation of California law.

Claimant alleges that during the relevant time period, the Company had a policy, practice, procedure, guideline, and/or culture of not providing Sales Persons, 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 six (6) or more hours in a day. Claimant also alleges that the Company has a policy, practice, procedure and/or guideline of not providing Claimant and other Sales Persons 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 ten (10) or more hours in a day. Claimant asserts that he and other Sales Persons were not provided with the opportunity to take lawful meal periods because the Company had a policy, practice, procedure, guideline, and/or culture of misclassifying Claimant and other Sales Persons as exempt employees and therefore not providing them with compliant meal periods.

For the same and/or similar reasons, Claimant and other Sales Persons were not authorized or permitted by the Company 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 Sales Persons were not provided with a legally compliant rest period.

Although Sales Persons including Claimant, did not receive legally compliant meal and/or rest periods, Claimant and, on information and belief, other Sales Persons did not receive premium wages equivalent to one (1) additional hour of pay at their regular rate of pay for each day they were not provided compliant meal and/or rest periods.

Claimant alleges that the Company has a policy, practice, procedure, guideline, and/or culture of not timely paying former Sales Persons, 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 being terminated from his employment with the Company on November 24, 2021, he was not immediately paid all of his wages due and owing including, including all earned commissions. Instead the Company did not issue Claimant's final wages until December 7, 2021, which Claimant contends did not include all commissions earned. Claimant also contends that, to date, he has not received all wages and commissions owed nor the required waiting time penalties. Claimant further contends, based on information and belief, that other former Sales Persons were not timely paid all wages due and owing upon separation of employment and/or the required waiting time penalties.

Claimant contends that during the relevant time period, the Company had a policy, practice, procedure, guideline, and/or culture of not furnishing Sales Persons, including Claimant, with accurate, itemized wage statements. For instance, Claimant contends that the Company failed to furnish him and, on information and belief, other Sales Persons with an itemized wage statement at the time of each payment of wages, including commissions. The wage statements furnished to Sales Persons, such as Claimant, did not include the accurate amount of wages and commissions earned, the actual total hours worked, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate, the gross wages actually earned, the net wages actually earned, the proper pay period information, and the proper employer information. Due to the Company's failure to furnish accurate, itemized wage statements, Claimant and other Sales Persons were unable to promptly and easily determine, for example, whether they were underpaid for commissions.

Claimant asserts that the Company has a policy, practice, procedure, guideline, and/or culture of not maintaining accurate employment records. The Company's illegal policies, practices, procedures, and/or guidelines, such as those described herein, including the Company's underpayment of wages and commissions, and failure to record all hours worked, have resulted in the Company's failure to maintain

accurate records reflecting Sales Persons' actual wages earned and paid, among other things, in violation of California law.

Claimant also alleges that the Company has a policy, practice, procedure, and/or guideline of not reimbursing Claimant and other Sales Persons for all necessary business expenses that were incurred in the discharge of their job duties. For instance, Claimant and, on information and belief, other Sales Persons worked remotely due to the pandemic and were not reimbursed sufficiently for the use of their homes as a work space, use of their personal cell phones, home internet, utilities, printing expenses, office supplies, and other expenses incurred in discharge of their employment duties.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other Sales Persons certain rights afforded to them under the Labor Code and IWC Wage Order No. 4-2001. Claimant makes these claims against the Company on behalf of himself and all other Sales Persons.

To the extent the Company contends that any claims alleged herein are subject to arbitration, any such assertion is meritless. Any alleged arbitration agreement contains an illegal condition of employment provision upon which Claimant detrimentally relied upon, and had Claimant known that any such condition was illegal, he would not have signed any such alleged agreement. Additionally, any alleged arbitration agreement fails to adequately inform Claimant that any PAGA claims are subject to the arbitration agreement. Further, PAGA claims are not subject to arbitration, as the State of California is not a party to any alleged arbitration agreement.

All facts, claims, and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Sales Persons. 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 Sales Persons against the Company, and/or other persons that may be discovered after the sending of this written notice. 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 Company, 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 Company, 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 Company. Claimant reserves the right to revise these facts, include new 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.

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

(Labor Code §§ 204, 210, 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 twice during each calendar month on days designated in advance by the employer as

regular paydays. 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”].)

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.)

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 an 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 Company has 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 Sales Persons for all hours actually worked and/or time spent under the control of the Company on the date designated in advance by the Company as the regular payday. For instance, as a result of the Company misclassifying Claimant and other Sales Persons as “exempt,” the Company failed to timely pay all overtime and/or double time wages to Claimant and other Sales Persons 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 Company for its violations of the Labor Code on behalf of himself and all Sales Persons to the extent permitted by law.

FAILURE TO TIMELY PAY ALL WAGES AND COMMISSIONS
DUE DURING EMPLOYMENT
(Labor Code §§ 204 and 210)

Labor Code section 204(a) states in pertinent part, “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Furthermore, Labor Code section 204(b)(1) states, “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

Labor Code section 210 provides 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.

As set forth above, the Company violated these Labor Code sections by not paying Claimant and other Sales Persons all earned commissions. Furthermore, as a direct result of the Company misclassifying Claimant and Sales Persons as exempt, the Company failed to pay all minimum, regular, overtime and/or double time wages, and meal break and rest break premium wages, within the required time of their employment. As a result of the Company’s failure to comply with the aforementioned Labor Code provisions, the Company owes waiting time penalties. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other Sales Persons to the extent allowed by the law.

SECRET UNDERPAYMENT OF WAGES

(Labor Code § 223)

Labor Code 223 states, “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

As stated herein, the Company and Claimant entered into an agreement in which the Company was to compensate Claimant and other Sales Persons a commission rate of 3%. Claimant, and on information and belief, other Sales Persons, were not paid all earned wages due to the Company’s illegal pattern and practice of underpaying or otherwise not paying earned commissions. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other current and former Sales Persons to the extent allowed by law.

FAILURE TO PROVIDE MEAL PERIODS AND/OR TIMELY PAY PREMIUM WAGES

(Labor Code §§ 204, 226.7, 512, 558, 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.)

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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.)

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 an 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, because the Company misclassified Claimant and other Sales Persons as “exempt,” it failed to provide Claimant and, on information and belief, other Sales Persons 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 Sales Persons are entitled to receive one-hour of premium wages at their regular rate of pay for each day a compliant meal period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Sales Persons 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.)

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 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, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, because the Company misclassified Claimant and other Sales Persons as "exempt," it failed to authorize and permit Claimant and, on information and belief, other Sales Persons to take an off-duty, uninterrupted 10-minute rest period for every four (4) hours worked or major fraction thereof. Therefore, Claimant and other Sales Persons are entitled to receive one-hour of premium wages at their regular rate of pay for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violations of law on behalf of himself and all Sales Persons to the extent allowed 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 Company violated these Labor Code sections by not timely paying to Claimant and other former Sales Persons all commission wages, as well as minimum, regular, overtime, and/or double time wages, and meal and/or rest period premium wages, within the required time upon separation of their employment. For instance, Claimant contends that despite being terminated from his employment with the Company on November 24, 2021, he was not immediately paid all of his wages due and owing, including all earned commissions. Instead, the Company did not issue Claimant's final wages until December 7, 2021, which Claimant contends did not include all earned commissions. The Company also did not pay Claimant and, on information and belief, other former Sales Persons the required waiting time penalties for the late payment of wages. Thus, the Company violated California law. Claimant will pursue all available remedies against the Company for its violations of California law on behalf of himself and all former Sales Persons 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 a 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 a 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 Company failed to furnish Claimant and other Sales Persons with accurate itemized wage statements as required by California law. The wage statements furnished to Sales Persons, such as Claimant, did not include the accurate amount of wages and commissions earned, the actual total hours worked, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate, the gross wages actually earned, the net wages actually earned, the proper pay period information, and the proper employer information. As a result, Claimant and other Sales Persons were not informed of, for instance, their correct amount of gross wages earned, and the net wages earned. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Sales Persons 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 § 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 a 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...

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.

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.

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).

As set forth above, the Company violated its record keeping requirements by failing to record all hours worked and failing to accurately record the actual wages and commissions earned and paid. Claimant will pursue all available remedies against the Company for its violations of the law on behalf of himself and all Sales Persons 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 Company required Claimant and other Sales Persons to work remotely during the pandemic. As a result, Claimant and other Sales Persons incurred expenditures in the discharge

of their duties, including the use of their personal cell phones, home internet, utilities, printing expenses, office supplies, and other expenses related to the use of their homes as a work space. The Company reimbursed Claimant and other Sales Person \$50 per month, which is insufficient to reimburse them for all expenses incurred in discharge of their employment duties. Claimant will pursue all available remedies against the Company, for its Labor Code violations on behalf of himself and all Sales Persons the extent allowed by law.

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

(Labor Code §§ 210, 226.3, 558, 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 § 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.

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.”

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, 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 Company violated the Labor Code and IWC Wage Order 4-2001 by, among other things: failing to timely pay all regular, minimum, and/or overtime wages; failing to pay commission wages designated by contract; secretly underpaying wages; failing to provide legally compliant meal and/or rest periods and/or timely pay premium 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 employment 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 Company is liable for civil penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(f). Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Company's violations on behalf of himself and all other Sales Persons 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.

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 Company is 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 Company's unlawful actions. Claimant will pursue all available remedies against the Company, those provided by PAGA, on behalf of himself and other Sales Persons to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

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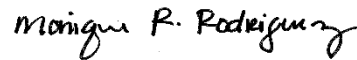
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CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and IWC Wage Order No. 4-2001, thereby depriving Claimant and other Sales Persons of the rights and protections afforded to them. Specifically, Claimant contends that the Company violated Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and IWC Wage Order 4-2001. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Sales Persons, 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 Sales Persons, as permitted by the PAGA.

Sincerely,

A handwritten signature in black ink that reads 'Monique R. Rodriguez'.

Monique R. Rodriguez