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

KEVIN FOX, and on behalf of himself and
others similarly situated, and on behalf of the
general public,

Plaintiff,

vs.

WORLD BACK TO WORK, INC., a
California corporation; ROB WRIGHT, an
individual; DAVID SHOR, an individual;
JEFF SHULEM, an individual; and HEIDI
KIRCHER, an individual; and DOES 1
through 25, inclusive,

Defendants.

Case No. 22STCV24082

COMPLAINT FOR PENALTIES,
PREJUDMENT AND POSTJUDGMENT
INTEREST, ATTORNEYS' FEES, AND
COSTS

**1. PAGA Claim for Civil Penalties
Pursuant to Labor Code Sections 2698
et seq. for Violations of Labor Code
Sections 201-204, 206.5, 208, 212-213,
221, 226, 226.7, 226.8, 432.5, 510, 512,
1174, 1182.12, 1194, 1197, 1198, 1198.5,
and 2802.**

Plaintiff Kevin Fox ("Plaintiff") on behalf of himself and the people of the State of
California and as an "aggrieved employee" under the Labor Code Private Attorneys General Act
of 2004, § 2699, *et seq.* ("PAGA") complains against Defendants World Back to Work, Inc.
("WBTW"), Rob Wright, David Shor, Jeff Shulem, Heidi Kircher, and DOES 1 to 25
(collectively, "Defendants") as follows:

I. GENERAL ALLEGATIONS

1. This is a Representative Action, pursuant to Labor Code section 2699 *et seq.*, on

1 behalf of the following individuals:

- 2 a. All individuals who were willfully misclassified by Defendants as independent
3 contractors in the State of California since one (1) year prior to the date of
4 Plaintiff's notice letter to the Labor & Workforce Development Agency ("LWDA")
5 and continuing to the present ("Misclassified Aggrieved Employees");
- 6 b. All individuals who are employed or have been employed as an hourly employee of
7 Defendant WBTW in the State of California since one (1) year prior to the date of
8 Plaintiff's notice letter to the LWDA and continuing to the present ("Regular
9 Rate/Meal Premium Aggrieved Employees");
- 10 c. All individuals who are employed or have been employed as an hourly employee of
11 Defendant WBTW in the State of California since one (1) year prior to the date of
12 Plaintiff's notice letter to the LWDA and continuing to the present ("Regular
13 Rate/Rest Premium Aggrieved Employees");
- 14 d. All individuals who are employed or have been employed by Defendant WBTW in
15 the State of California who worked one or more pay periods since one (1) year
16 prior to the date of Plaintiff's notice letter to the LWDA and continuing to the
17 present ("Wage Statement Aggrieved Employees"); and
- 18 e. All individuals who requested their employment personnel file, payroll, or time
19 records from Defendants at any time from one (1) year prior to the date of
20 Plaintiff's notice letter to the LWDA and continuing to the present, and to whom
21 Defendants did not timely provide such records requested in full ("Personnel
22 Records Aggrieved Employees").

23 2. For at least one (1) year prior to the date of the letter sent to the LWDA and
24 Defendants giving notice of this claim pursuant to PAGA and continuing to the present,
25 Defendants have failed to properly comply with California Labor Code sections 201-204, 206.5,
26 208, 212-213, 221, 226, 226.7, 226.8, 432.5, 510, 512, 1174, 1182.12, 1194, 1197, 1198, 1198.5,
27 and 2802.

28 3. For at least one (1) year prior to the date of the letter sent to the LWDA and

1 Defendants giving notice of this claim pursuant to PAGA and continuing to the present,
2 Defendants has had a consistent policy of willfully misclassifying Misclassified Aggrieved
3 Employees as independent contractors in violation of California Labor Code section 226.8.

4 4. For at least one (1) year prior to the date of the letter sent to the LWDA and
5 Defendants giving notice of this claim pursuant to PAGA and continuing to the present,
6 Defendants has had a consistent policy of failing to pay wages for all hours worked to
7 Misclassified Aggrieved Employees.

8 5. For at least one (1) year prior to the date of the letter sent to the LWDA and
9 Defendants giving notice of this claim pursuant to PAGA and continuing to the present,
10 Defendants has had a consistent policy of requiring Misclassified Aggrieved Employees and to
11 sign contracts containing illegal provisions, including provisions classifying them as independent
12 contractors and provisions purporting to claw back their wages, as required by California Labor
13 Code sections 206.5, 221, 226.8, and 432.5.

14 6. For at least one (1) year prior to the date of the letter sent to the LWDA and
15 Defendants giving notice of this claim pursuant to PAGA and continuing to the present,
16 Defendants has had a consistent policy of failing to pay Misclassified Aggrieved Employees the
17 minimum wage for all hours worked as required by Wage Order No. 4 and California Labor Code
18 sections 558.1, 1182.12, 1194 and 1197.

19 7. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
20 Development Agency and Defendants giving notice of this claim pursuant to PAGA and
21 continuing to the present, Defendants have had a consistent policy of failing to pay wages and/or
22 overtime to Misclassified Aggrieved Employees at the legal rate of pay when they work more than
23 eight hours in a day or forty hours in a week as required by California Labor Code sections 510,
24 558.1, 1194, 1197, and 1198.

25 8. For at least one (1) year prior to the date of the letter sent to the LWDA and
26 Defendants giving notice of this claim pursuant to PAGA and continuing to the present,
27 Defendants have had a consistent policy of failing to properly pay Regular Rate/M Meal Premium
28 Aggrieved Employees one (1) hour of pay at the employees' regular rate of compensation for each

workday that a meal period was not provided, was not provided in full, or was not provided in a timely manner, as required by California Labor Code sections 226.7 and 512.

9. For at least one (1) year prior to the date of the letter sent to the LWDA and Defendants giving notice of this claim pursuant to PAGA and continuing to the present, Defendants have had a consistent policy of failing to properly pay Regular Rate/Rest Premium Aggrieved Employees one (1) hour of pay at the employees' regular rate of compensation for each workday that a (10) minutes net rest time per four (4) hours or major fraction thereof, was not provided, or was not provided in a timely manner, as required by California Labor Code sections 226.7 and 512.

10. For at least one (1) year prior to the date of the letter sent to the LWDA and Defendants giving notice of this claim pursuant to PAGA and continuing to the present, Defendants have had a consistent policy of failing to properly pay Misclassified Aggrieved Employees all wages due in a timely manner, as required by Labor Code section 204.

11. For at least one (1) year prior to the date of the letter sent to the LWDA and Defendants giving notice of this claim pursuant to PAGA and continuing to the present, Defendants have had a consistent policy of failing to comply with Wage Order No. 4 and Labor Code section 226(a) by failing to issue wage statements accurately showing the total hours worked, and the name and address of the legal entity that is the employer.

12. For at least one (1) year prior to the date of the letter sent to the LWDA and Defendants giving notice of this claim pursuant to PAGA and continuing to the present, Defendants have had a consistent policy of failing to comply with Wage No. 4 and Labor Code section 1174 by failing to maintain adequate payroll and time records for employees.

13. For at least one (1) year prior to the date of the letter sent to the LWDA and Defendants giving notice of this claim pursuant to PAGA and continuing to the present, Defendant had a consistent policy of failing to comply with Wage Order No. 4 and Labor Code section 1198.5 by failing to timely provide employees their payroll and time records upon request.

14. For at least one (1) year prior to the date of the letter sent to the LWDA and Defendants giving notice of this claim pursuant to PAGA and continuing to the present, Defendant

1 had a consistent policy of failing to pay all wages due at the time of termination or resignation to
2 Misclassified Aggrieved Employees and Wage Statement Aggrieved Employees in violation of
3 Labor Code sections 201-203, in the manner required by Labor Code sections 208, 212, 213.

4 15. For at least one (1) year prior to the date of the letter sent to the LWDA and
5 Defendants giving notice of this claim pursuant to PAGA and continuing to the present, Defendant
6 had a consistent policy of requiring employees to incur business-related expenses and failing to
7 fully reimburse Misclassified Aggrieved Employees and Wage Statement Aggrieved Employees
8 for those costs in violation of Labor Code section 2802.

9 16. Plaintiff, on behalf of himself and all aggrieved employees presently or formerly
10 employed by Defendants during the liability period, brings this representative action pursuant to
11 Labor Code sections 2698, *et seq.* seeking penalties under Labor Code sections 210, 225.5, 226,
12 226.3, 226.8, 558, 558.1, 1174.5, 1197.1, 1197.5, 1198.5, 2698 *et seq.*

13 II. PARTIES

14 A. Plaintiff

15 17. Plaintiff Kevin Fox ("Plaintiff") is an adult resident of the County of Los Angeles,
16 California. Plaintiff was employed as a WBTW Entry Screener by Defendants in the County of
17 Los Angeles. Plaintiff was employed by Defendants in February 2022. During his employment
18 with Defendants, Defendants misclassified Plaintiff as an independent contractor and required him
19 to sign a document purporting to classify him as an independent contractor. Defendants also failed
20 to pay Plaintiff for all wages worked, including overtime wages, failed to provide timely meal and
21 rest periods, failed to provide him with wage statements, failed to pay him all wages owed upon
22 termination, failed to provide him with payroll records upon request, and failed to reimburse him
23 for the costs of working for Defendants. Plaintiff terminated his employment with Defendants
24 when Defendants refused to pay him the overtime hours he worked. Thereafter, Defendants failed
25 to pay Plaintiff all wages owed upon termination in the manner required by California law, and
26 refused to give Plaintiff access to his employment records.

27 18. Upon information and belief, Plaintiff and all aggrieved employees are covered by
28 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.

1 Code of Regs. § 11040.).

2 19. Plaintiff and all current and former employees are aggrieved employees within the
3 meaning of Labor Code section 2699, *et seq.* (See Labor Code § 2699(c).)

4 **B. Defendants**

5 20. World Back to Work, Inc. (“WBTW”) is a California corporation authorized to do
6 business in California, and doing business in California, including in the County of Los Angeles.

7 21. Rob Wright is an individual who resides in California. At all times relevant to the
8 complaint, Wright was the Chief Executive Officer of WBTW. Upon information and belief,
9 Wright implemented and/or approved and/or caused the employment policies at WBTW, including
10 the policy of misclassifying employees as independent contractors, resulting in failure to pay them
11 and treat them appropriately under the Labor Code, requiring them to sign illegal contracts, and
12 failure to reimburse employees for the costs incurred doing their jobs.

13 22. David Shor is an individual who resides in California. At all times relevant to the
14 complaint, Shor was the Co-Founder and Chairman of WBTW. Upon information and belief, Shor
15 implemented and/or approved and/or caused the employment policies at WBTW, including the
16 policy of misclassifying employees as independent contractors, resulting in failure to pay them
17 and treat them appropriately under the Labor Code, requiring them to sign illegal contracts, and
18 failure to reimburse employees for the costs incurred doing their jobs.

19 23. Jeff Shulem is an individual who resides in California. At all times relevant to the
20 complaint, Shulem was the Chief Financial Officer of WBTW. Upon information and belief,
21 Shulem implemented and/or approved and/or caused the employment policies at WBTW,
22 including the policy of misclassifying employees as independent contractors, resulting in failure to
23 pay and treat employees appropriately under the Labor Code, requiring them to sign illegal
24 contracts, and failure to reimburse employees for the costs incurred doing their jobs.

25 24. Heidi Kircher is an individual who resides in California. At all times relevant to the
26 complaint, Kircher was the Head of Operations and Staffing Support at WBTW. Upon information
27 and belief, Kircher implemented and/or approved and/or caused the employment policies at
28 WBTW, including the policy of misclassifying employees as independent contractors, resulting in

1 failure to pay and treat employees appropriately under the Labor Code, requiring them to sign
2 illegal contracts, and failure to reimburse employees for the costs incurred doing their jobs.

3 25. Defendants employed Plaintiff and the other aggrieved employees within
4 California. Some of the violations alleged herein arose in the County of Los Angeles, California,
5 including all violations as to Plaintiff.

6 26. The true names and capacities, whether corporate, associate, individual or
7 otherwise, of Defendants sued as DOES 1 through 25, inclusive, are unknown to Plaintiff. Plaintiff
8 therefore sues said Defendants by such fictitious names pursuant to California Code of Civil
9 Procedure section 474. Each of the Defendants designated herein as a DOE is legally responsible
10 in some manner for the events and happenings referred to in the Complaint, and caused injuries
11 and damages proximately to Plaintiff, as herein alleged. Plaintiff will ask leave of Court to amend
12 this Complaint to show their names and capacities when the same have been ascertained.

13 27. The Defendants named herein as DOE 1 through DOE 25 are and were persons
14 acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one
15 or more provisions of the California Labor Code and public policy as alleged herein.

16 28. Whenever and wherever reference is made in this complaint to any act or failure to
17 act by a Defendant or Defendants, such allegations and references shall also be deemed to mean
18 the acts and/or failures to act by each Defendant acting individually, jointly, and/or severally.

19 29. Plaintiff is informed and believes, and based thereon alleges, that at all material
20 times, one or more of each named and/or unnamed Defendants was the agent, servant, employee,
21 or employer of one or more of the remaining named and/or unnamed Defendants and, as
22 hereinafter alleged, was acting within the scope of such authority, consent, agency, servancy, or
23 employment.

24 30. Plaintiff is informed and believes, and based thereon alleges, that at all material
25 times, one or more of each named and/or unnamed Defendants was in some fashion, by contract or
26 otherwise, the predecessors, affiliates, alter egos, assigns, joint-venturers, co-venturers or partners
27 of one or more of the remaining named and/or unnamed Defendants, and as hereinafter alleged,
28 was acting within that capacity.

1 31. Plaintiff is further informed and believes, and on that basis alleges, that one or
2 more of the remaining named and/or unnamed Defendants are the successors of one or more of the
3 remaining named and/or unnamed Defendants. Such successors are liable for the occurrences,
4 damages, and injuries alleged herein to the same extent its predecessors are liable for the alleged
5 occurrences, damages and injuries.

6 32. Plaintiff alleges that Defendants acted in all respects as the employers or joint
7 employers of Aggrieved Employees. Defendants, and each of them, exercised control over the
8 wages, hours or working conditions of Aggrieved Employees, or suffered or permitted the
9 Aggrieved Employees to work, or engaged, thereby creating a common law employment
10 relationship, with the Aggrieved Employees. Therefore, Defendants, and each of them, employed
11 or jointly employed the Aggrieved Employees.

12 33. Plaintiff alleges that Defendants were the alter-egos of one or more of the
13 remaining named and/or unnamed Defendants, and as hereinafter alleged, was acting for their own
14 benefit and/or the benefit of one or more of the remaining named and/or unnamed Defendants.
15 Plaintiff alleges that Defendants were acting on behalf of each other in the establishment of,
16 ratification of, and/or execution of the illegal practices and policies as set forth in this
17 pleading. Plaintiff is further informed and believes, and thereon alleges that at all times relevant
18 hereto Defendants had decision-making responsibility for, and establishment and execution of,
19 illegal practices and policies for each other and are, therefore, liable on the causes of action herein.

20 34. Plaintiff alleges that at all material times, one or more of each unnamed Defendants
21 was in some fashion, by statute, law or otherwise, the agent, agency, branch, department or the
22 like of one or more of the remaining named and/or unnamed Defendants for the acts alleged herein
23 and was acting within that capacity.

24 35. Plaintiff further alleges that there exists such a unity of interest and ownership
25 between Defendants that the individuality and separateness of those Defendants have ceased to
26 exist. The business affairs of Defendants are, and at all times relevant hereto were, so mixed and
27 intermingled that the same cannot reasonably be segregated, and the same are in inextricable
28 confusion. Defendants were used as mere shells and conduits for the conduct of certain of other
Defendants' affairs. The recognition of the separate existence of Defendants would not promote

1 justice, in that it would permit Defendants to insulate themselves from liability to
2 Plaintiff. Accordingly, Defendants constitute the alter egos of each other, and the fiction of their
3 separate existence must be disregarded at law and in equity, because such disregard is necessary to
4 avoid fraud and injustice to Plaintiff herein.

5 **III. JURISDICTION & VENUE**

6 36. This Court has subject matter jurisdiction over any and all causes of action asserted
7 herein pursuant to Article VI, section 10 of the California Constitution and California Code of
8 Civil Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in
9 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
10 arises under the laws of the State of California or is subject to adjudication in the courts of the
11 State of California.

12 37. The California Superior Court has jurisdiction over WBTW because WBTW is a
13 corporation that is authorized to do business and does business in California, does business in Los
14 Angeles, California.

15 38. The California Superior Court has jurisdiction over Defendants Rob Wright, David
16 Shor, Jeff Shulem, and Heidi Kircher because they reside in California, and conduct business on
17 behalf of WBTW in Los Angeles, California.

18 39. This Court has jurisdiction over Defendants because Defendants have caused
19 injuries in the County of Los Angeles and the State of California through their acts, and by their
20 violations of the California Labor Code.

21 40. Venue is proper in Los Angeles County, in the State of California, because
22 Defendants' wrongful conduct, as alleged herein, occurred in said County and State. The unlawful
23 acts alleged herein have a direct effect on Plaintiff and all "aggrieved employees" within the State
24 of California and Los Angeles County.

25 41. Plaintiff has complied with all conditions precedent (exhaustion of administrative
26 remedies) to jurisdiction.

27 42. On or about April 8, 2022, Plaintiff submitted written notice stating Defendants'
28 violations of various provisions of the California Labor Code as alleged in this complaint to the

1 LWDA and to Defendants. Such notice was also provided to Defendants via certified mail.

2 43. The LWDA did not provide notice of its intention to investigate Defendants’
3 alleged violations within sixty (60) days of the April 8, 2022, postmark date of the notice sent by
4 Plaintiff. Defendants operated and continues to operate and conducted business in California.

5 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

6 44. WBTW formed as a corporation with a mission of “providing Return-to-Work
7 (RTW) and Stay-at-Work (SAW) solutions” during the Covid-19 pandemic or endemic, including
8 providing medical screening services to “help businesses reopen safely during the Covid
9 pandemic.”

10 45. At all times relevant to this complaint, and continuing through today, WBTW has
11 employed staff to provide the essential services on a regular and continuous basis, including
12 screening services, that WBTW sells to clients. At all times relevant to this complaint, and
13 continuing through today, WBTW has controlled the compensation rates, hours, location of work,
14 and conditions of the work by such staff. At all times relevant to this complaint, and continuing
15 through today, WBTW has provided such staff with detailed instructions on how to do in their
16 jobs, and has employed persons to supervise this staff.

17 46. At all times relevant to this complaint, and continuing through today, Defendants
18 have created and maintained an illegal policy(ies) of misclassifying WBTW’s staff as independent
19 contractors in order to avoid their obligations under California law to appropriately and timely pay
20 minimum and overtime wages, to provide timely meal and rest periods and wage statements, to
21 maintain and produce payroll records, and to comply with WBTW’s tax obligations with respect
22 to the employment of its staff, among other obligations. At all times relevant to this complaint,
23 and continuing through today, Defendants have required their staff to sign agreements with illegal
24 provisions stating they are independent contractors and containing illegal terms purporting to
25 authorize Defendants to claw back their staffs’ earned wages should the staff not provide certain
26 notice to Defendants before terminating their employment.

27 47. At all times relevant to the complaint, Defendants Rob Wright, David Shor, Jeff
28 Shulem, and Heidi Kircher were Executive leaders running Defendants’ operations and

1 procedures. Upon information and belief, Wright, Shor, Shulem, and Kircher concocted and
2 implemented a business strategy of misclassifying WBTW's employees and service workers, all of
3 whom provided the essential services that WBTW offered to clients, in order to gain more profits
4 for company shareholders including themselves, at the expense of and to the detriment of WBTW
5 employees and the State of California. Upon information and belief, this plan took effect in the
6 beginning of the formation of the corporation and remains in effect today. Upon information and
7 belief, Defendants Wright, Shor, Shulem, and Kircher continue to authorize the illegal
8 misclassification of employees and resulting violations of California wage and hour law.

9 **V. FACTUAL ALLEGATIONS REGARDING PLAINTIFF AS AN**
10 **AGGRIEVED PARTY**

11 48. In February 2022, Plaintiff received an advertisement for a full-time position as
12 Mobile Check-in staff and Screeners" at WBTW. Plaintiff responded to the WBTW advertisement
13 and shortly after was offered the position. On or about February 13, 2022, WBTW sent Plaintiff a
14 written employment agreement for the position of WBTW Entry Screener/COVID Test Center at a
15 rate of \$20 per hour and stated that "you will be asked to complete a W9 and you are a 1099
16 contractor."

17 49. Plaintiff's duties and responsibilities included:

- 18 a. Memorizing and carrying out the entry rules for the specific event/festival entry
19 screening and COVID testing centers;
- 20 b. Informing customers "who are unaware of the required protocols what they are and
21 the fact that they are required for entry, without exception";
- 22 c. "Facilitating a gentle but firm approach to turning away patrons (and, where
23 applicable) staff . . . who have not met the requirements for entry";
- 24 d. "Escalate to a supervisor if any guest is unwilling to comply";
- 25 e. "Learn the answers to Frequently Asked Questions so as to be informed and
26 authoritative in your answers";
- 27 f. "Notify your supervisor of any issues or concerns before they become a crisis" and
28 g. If the worker provides less than 24 hours notice of decision to not to return to work,

1 the worker “will forfeit their prior week’s compensation because of the material
2 inconvenience to WBTW to staff the short-staffed upcoming session.”

3 50. On or about February 13, 2022, Plaintiff signed the contract. Shortly after that,
4 WBTW sent Plaintiff his work schedule as five nine-hour shifts at El Camino College. WBTW
5 additionally sent Plaintiff an email instructing him on his first day of work, including as follows:

6 a. “Arrival time: (1 hr before scheduled time)”

7 b. “Report to: COO, Ashely Smith . . . Lauren Smith (Morning Shift Lead) . . . Jeanie
8 Inthavong (Afternoon/Evening Leads)”

9 c. “What is the uniform? Non-Medical – Long pants, no denim, back or dark blue
10 shirt”

11 51. On his first day, Plaintiff arrived at his work site at El Camino College in the
12 uniform as instructed by WBTW one hour before his scheduled shift began as instructed by
13 WBTW. Supervisor Ashley Smith trained Plaintiff and his coworkers while they were off-the-
14 clock on how to use WBTW’s laptops and tablets, how to scan students, and instructed them on
15 the process on screening students. Ashley Smith also instructed Plaintiff and his coworkers to
16 download apps on their personal mobile phones so that they may use the apps for their work on
17 their personal mobile phones.

18 52. During the course and scope of his employment at WBTW, Plaintiff and the
19 aggrieved employees were not permitted to take rest breaks as provided by California Labor Law.
20 WBTW also failed to allow Plaintiff and the aggrieved employees to take their meal breaks in a
21 timely manner.

22 53. When Plaintiff asked his supervisor, Ashely Smith, whether he would be receiving
23 overtime pay for his overtime hours worked in accordance with the law, Ashley Smith laughed
24 condescendingly and asked in a demeaning and sarcastic manner, “You know you signed an
25 independent contractor agreement, right?” Plaintiff understood by this that WBTW would refuse
26 to give him the breaks and overtime required by law. He advised that he did not want to work for a
27 company that violated his rights and asked for his final paycheck. Ashley Smith laughed at
28 Plaintiff again and said in a sarcastic tone, “Did I hire you?” Plaintiff then advised another

1 supervisor that he no longer wanted to work for WBTW and requested his final paycheck.

2 54. WBTW paid Plaintiff his final paycheck via direct pay even though Plaintiff did
3 not authorize WBTW to pay him his final paycheck in that method. WBTW failed to provide
4 Plaintiff with an itemized wage statement accurately stating the hours he worked and for which he
5 was being paid. WBTW also did not pay Plaintiff for his time worked off-the-clock (including the
6 approximately one hour that he worked on his first day to train), did not pay him for missed meal
7 and rest breaks, and did not pay him for overtime hours that he worked for WBTW.

8 55. In March 2022, Plaintiff requested his employee file from WBTW, including
9 payroll records and his personnel file. WBTW did not provide Plaintiff access to his payroll
10 records upon request.

11 **VI. FACTUAL ALLEGATIONS REGARDING PLAINTIFF AND AGGRIEVED**
12 **EMPLOYEES**

13 56. Upon information and belief, Defendants have applied and continue to apply, the
14 same pattern, practice and policies to all its employees that it applied to Plaintiff.

15 **Misclassification**

16 57. Plaintiff is informed and believes and based thereon alleges that Defendants have a
17 pattern and practice of willfully misclassifying its employees as independent contractors.

18 58. At all times relevant to the complaint, Plaintiff and Aggrieved Employees were:

- 19 i. Under the control and direction of WBTW in connection with the
20 performance of their work, under the contract for the performance of the
21 work and/or in fact; *and/or*
22 ii. Performing work that is part of the usual course of WBTW's business;
23 *and/or*
24 iii. Not customarily engaged in an independently established trade, occupation,
25 or business of the same nature as that involved in the work performed.

26 59. At all times relevant to the complaint, Defendants have willfully misclassified all or
27 large groups of its employees pursuant to a pattern and practice and pursuant to illegal policies
28 created and maintained by Defendants. As a result of these violations, Defendants are liable for

1 civil penalties pursuant to California Labor Code sections 226.8, 2698 *et seq.*

2 **Overtime Pay Violations**

3 60. Plaintiff is informed and believes and based thereon alleges that Defendants have
4 suffered and permitted Plaintiff and Aggrieved Employees to regularly work beyond eight hours in
5 a day or forty hours in a week without paying them at an overtime rate.

6 61. Plaintiff and Aggrieved Employees are, and at all relevant times were, covered by
7 Wage Order No. 4-2001 along with California Labor Code section 510. Employers are required to
8 pay employees one-and-one-half times their normal hourly rate for hours work in excess of eight
9 hours per day and in excess of forty hours per week, and at twice the normal hourly rate for hours
10 worked in excess of twelve hours per day and eight hours on the seventh day worked in a work
11 week. As a result of these violations, Defendants are liable for civil penalties pursuant to
12 California Labor Code sections 558, 558.1, 1197, 1197.1, 1198, 2698 *et seq.*

13 **Minimum Wage Violations**

14 62. Plaintiff is informed and believes and based thereon alleges that Defendants have
15 suffered and permitted Plaintiff and Aggrieved Employees to work off-the-clock (including when
16 training them and requiring them to show up early to their shifts) and therefore have not paid them
17 for all hours worked. Defendants therefore have not compensated employees an amount equal to
18 or greater than the minimum wage for all hours worked as required by California Labor Code
19 sections 1194, 1197, 1197.1 and Wage Order No. 4-2001. As a result of these violations for failure
20 to pay minimum wage, Defendants are liable for civil penalties pursuant to California Labor Code
21 sections 558, 558.1, 1182.12, 1197, 1197.1, 2698 *et seq.*

22 **Meal and Rest Period Violations**

23 63. Plaintiff is informed and believes and based thereon alleges that Defendants have
24 suffered and permitted Plaintiff and Aggrieved Employees to regularly work for more than four
25 consecutive hours without a ten-minute rest break relieved of all duties, and for more than five
26 consecutive hours without a thirty-minute meal break relieved of all duties. As a result of these
27 violations, Defendants are liable for civil penalties pursuant to California Labor Code sections
28 558, 558.1, 2698 *et seq.*

1 **Timely Payment of Wages**

2 64. Plaintiff is informed and believes and based thereon alleges that Defendants have
3 not and do not properly and timely compensate Plaintiff and Aggrieved Employees for hours
4 worked in excess of eight hours in a day and forty hours in a week, as well as for missed meal
5 periods, as articulated above. Accordingly, Defendants violated California Labor Code section
6 204(a), which requires that employers pay “all wages...twice during each calendar month on days
7 designated in advance by the employer as the regular paydays.” As a result, Defendants are liable
8 for civil penalties pursuant to California Labor Code sections 204, 210, 558, 2698 *et seq.*

9 **Accurate Itemized Wage Statements**

10 65. Plaintiff is informed and believes and based thereon alleges that Defendants have
11 knowingly and intentionally failed to furnish Plaintiff and Aggrieved Employees with timely,
12 itemized wage statements accurately showing, among other things required, total hours worked, or
13 hourly rate paid, as required by California Labor Code section 226(a). As a result, Defendants are
14 liable for civil penalties pursuant to California Labor Code sections 226, 226.3, 558.1, 2698 *et seq.*

15 **Failure to Maintain Accurate Records**

16 66. Plaintiff is informed and believes and based thereon alleges that Defendants have
17 failed to keep payroll records showing total hours worked and wages paid to employees. Under
18 California Labor Code section 1174(d), employers must keep “payroll records showing the hours
19 worked daily and the wages paid to...employees...” Because Defendants did not keep accurate
20 time records reflecting hours worked for employees, they are liable for civil penalties pursuant to
21 California Labor Code sections 1174.5, 2698 *et seq.*

22 **Failure to Provide Records Upon Request**

23 67. Plaintiff is informed and believes and based thereon alleges that Defendants have
24 failed to permit Plaintiff and Aggrieved Employees to inspect their personnel files, employment
25 files, payroll records and/or time records upon request. Under California Labor Code section
26 1198.5, employers must “make a former employee's personnel records available for inspection,
27 and, if requested by the employee or his or her representative, provide a copy thereof, at the
28 location where the employer stores the records, unless the parties mutually agree in writing to a

1 different location.” Defendants did not and have not done so for Plaintiff and Aggrieved
2 Employees. As a result, Defendants are liable for civil penalties pursuant to California Labor Code
3 sections 1198.5, 2698 *et seq.*

4 **Unpaid Wages Upon Discharge Violations**

5 68. Plaintiff is informed and believes and based thereon alleges that Defendants failed
6 to pay all compensation due and owing to Plaintiff and former Aggrieved Employees, including
7 minimum and overtime wages, upon separation as required by California Labor Code section 201,
8 202, and 203. Plaintiff is information and believes and based thereon alleges that Defendants
9 failed to pay all compensation due and owing to Plaintiff and Aggrieved Employees via
10 appropriate methods as outlined in Labor Code sections 208, 212, 213. As a result, Defendants are
11 liable for civil penalties pursuant to California Labor Code sections 558.1, 2698 *et seq.*

12 **Business Expense Reimbursement Violations**

13 69. Plaintiff is informed and believes and based thereon alleges that Defendants have
14 not and do not fully reimburse Plaintiff and Aggrieved Employees for all reasonable and necessary
15 business expenditures they incurred while completing their job duties as required by California
16 Labor Code section 2802. Employees regularly incurred reasonable and necessary business
17 expenditures in the course of completing their duties, which include, but are not limited to,
18 internet, monthly cellular phone and data plans. Employees necessarily and reasonably incurred
19 these expenditures, but Defendants failed to reimburse for these business costs. As a result,
20 Defendants are liable for civil penalties pursuant to California Labor Code sections 558.1, 2698 *et*
21 *seq.*

22 **Illegal Clawbacks**

23 70. Plaintiff is informed and believes and based thereon alleges that Defendants have
24 clawed back parts of wages earned by Plaintiff and Aggrieved Employees as a penalty for failing
25 to give what Defendants deem to be timely notice of their intent to leave their employment,
26 including pursuant to contracts that Defendants required employees to sign. Labor Code section
27 221 prohibits employers from collecting or receiving from an employee any part of their wages.
28 Because Defendants violated section 221 of the Labor Code, they are liable for civil penalties

1 pursuant to California Labor Code sections 225.5, 2698 *et seq.*

2 **Illegal Contracts**

3 71. Plaintiff is informed and believes and based thereon alleges that Defendants have
4 required Plaintiff and Aggrieved Employees to sign illegal contracts as a condition of
5 employment. Such illegal contracts include requiring employees to work as misclassified
6 contractors and requiring employees to give up their earned wages should they choose to terminate
7 their employment with Defendants with what Defendants deem to be untimely notice. California
8 Labor Code section 432.5 provides that “No employer, or agent, manager, superintendent, or
9 officer thereof, shall require any employee or applicant for employment to agree, in writing, to any
10 term or condition which is known by such employer, or agent, manager, superintendent, or officer
11 thereof to be prohibited by law.” Labor Code section 206.5 provides that “An employer shall not
12 require the execution of a release of a claim or right on account of wages due, or to become due, or
13 made as an advance on wages to be earned, unless payment of those wages has been made.” As a
14 result of Defendants’ illegal conduct, Defendants are liable for civil penalties pursuant to
15 California Labor Code sections 558.1, 2698 *et seq.*

16 **FIRST CAUSE OF ACTION**

17 **PAGA Claim for Civil Penalties Pursuant to Labor Code Sections 2698 *et. seq.* for Violations**
18 **of Labor Code Sections 201-204, 206.5, 208, 212-213, 221, 226, 226.7, 226.8, 432.5, 510, 512,**
19 **1174, 1182.12, 1194, 1197, 1198, 1198.5, and 2802**
20 **(Against all Defendants and DOES 1 through 25)**

21 72. Plaintiff realleges and incorporates by reference each and every paragraph as
22 though restated in their entirety herein.

23 73. Plaintiff is an aggrieved employee under PAGA as defined in California Labor
24 Code section 2699(a), as he was employed by Defendants during the applicable statutory period
25 and suffered one or more of the California Labor Code violations set forth herein. As such,
26 Plaintiff seeks to recover, on behalf of all current and former aggrieved employees affected by the
27 California Labor Code violations alleged in this Complaint within the statutory time period, the
28 civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

1 74. Plaintiff seeks to recover the PAGA civil penalties through a representative action
2 as permitted by PAGA. Therefore, class certification of the PAGA claim is not required.

3 75. Plaintiff seeks to recover civil penalties pursuant to PAGA for failure to comply
4 with the California Labor Code as follows:

- 5 a. Maintenance of a pattern and practice of willfully misclassifying employees as
6 independent contractors (see California Labor Code section 226.8);
- 7 b. Requiring employees to sign employment contracts with illegal provisions,
8 including provisions misclassifying them as independent contractors and provisions
9 permitting Defendants to claw back employee wages for time worked (see
10 California Labor Code sections 206.5, 432.5);
- 11 c. Failure to provide and maintain employee accurate itemized wage statements in
12 (see California Labor Code sections 226(a), 226(e), 226.3, 1174, and 1174.5);
- 13 d. Failure to provide meal and rest periods (see California Labor code sections 226.7,
14 512, and 558);
- 15 e. Failure to pay overtime wages (see California Labor Code sections 510, 558, 1194,
16 1197, 1197.1, and 1198);
- 17 f. Failure to pay minimum wages (see California Labor Code sections 558, 1182.12,
18 1194, 1182.12, 1197, 1197.1);
- 19 g. Failure to pay all wages twice during each calendar month on days designated in
20 advance by the employer as the regular paydays (see California Labor Code
21 sections 204, 210, 558);
- 22 h. Failure to pay all wages owed upon discharge of employment in a timely and
23 appropriate manner (see California Labor Code sections 201, 202, 203, 208, 212,
24 213);
- 25 i. Failure to reimburse employees for all reasonably necessary expenditures and
26 losses incurred by employees in direct consequence of the discharge of their duties,
27 including but not limited to, cell phone costs, cellular phone plans and internet (see
28 California Labor Code section 2802);

1 j. Taking illegal claw backs of earned wages from employees (see California Labor
2 Code sections 221, 225.5); and
3 k. Failure to provide employment records upon request by an employee (see
4 California Labor Code section 1198.5).
5 76. Plaintiff has fully complied with the procedural requirements specified in Labor
6 Code section 2699.3 as to each of the alleged violations. On April 8, 2022, Plaintiff provided
7 notice to Defendants and the LWDA of Plaintiff's claims based on the alleged Labor Code
8 violations, including the facts and theories supporting these claims. The LWDA has provided no
9 notice to Plaintiff regarding its intentions to investigate or not investigate Plaintiff's claims.
10 Accordingly, Plaintiff may commence this action pursuant to Labor Code section 2699.
11 77. Enforcement of statutory provisions to protect workers and to ensure proper and
12 prompt payment of wages is a fundamental public interest. Plaintiff's successful enforcement of
13 important rights affecting the public interest will confer a significant benefit upon the general
14 public. Private enforcement of these rights is necessary, as no public agency has pursued
15 enforcement. Plaintiff is incurring a financial burden in pursuing this action, and it would be
16 against the interests of justice to require the payment of attorneys' fees and costs from any
17 recovery obtained, pursuant to, inter alia, Labor Code section 2699.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the aggrieved employees, prays for judgment against Defendants as follows:

1. An award of civil penalties pursuant to PAGA, including penalties provided by Labor Code sections 210, 225.5, 226(e), 226.3, 226.8, 558, 558.1, 1174.5, 1197.1, 1198.5, 2698, *et seq*;
2. An award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g) and/or other applicable law;
3. Pre-judgment and post-judgment interest as provided by law; and
4. An award of such other and further relief as this Court may deem appropriate.

DATED: July 26, 2022

Genie Harrison Law Firm, APC

By: 

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