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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

VERNON BARNETT, individually and)
as an aggrieved employee pursuant to)
the Private Attorneys General Act)
("PAGA") on behalf of the State of)
California and other aggrieved)
employees,)

Plaintiffs,

vs.

QW INSURANCE SOLUTIONS, LLC,)
a Washington limited liability company;)
and DOES 1 through 50,)

Defendants.)

Case No.: 37-2022-00019924-CU-OE-CTL

**CLASS AND PAGA ACTION
COMPLAINT FOR:**

- 1. Failure to pay
minimum/regular wages;**
- 2. Failure to Pay State Overtime;**
- 3. Failure to Comply with Meal
Break Laws;**
- 4. Failure to Comply with Rest
Break Laws;**
- 5. Failure to Reimburse
Expenses;**
- 6. Failure to Provide Accurate
Wage Statements;**
- 7. Failure to Pay Wages Timely;**
- 8. Failure to Provide and
Maintain Records;**
- 9. Individual Claim for
Violations of the California
Investigative Consumer
Reporting Agencies Act (Civ.
Code, § 1786, *et seq.*); and**
- 10. Violation of B.&P. Code §§
17200, *et seq.***

1 Plaintiff VERNON BARNETT, on behalf of himself, the State of California, and
2 acting for the interests of other current and former employees (“Aggrieved
3 Employees”), the putative class, and all others similarly situated individuals
4 (cumulatively “Plaintiffs”), allege the following:

5 **NATURE OF THE ACTION**

6 1. This is a consumer and wage and hour individual, class, and
7 representative action.

8 2. Pursuant to Code of Civil Procedure § 382 and the Private Attorney
9 General Act (“PAGA”), §§ 2698, 2699 of the California Labor Code, Plaintiffs bring
10 this proposed class and representative action against Defendants for wage and hour
11 abuses in violation of the California Labor Code and the Industrial Welfare
12 Commission Wage Orders (the “IWC Wage Orders”), all of which contribute to
13 Defendants’ deliberate unfair competition in California.

14 3. Plaintiffs seek all remedies available to them including but not limited to
15 reimbursements, penalties, restitution, injunctive and other equitable relief, reasonable
16 attorneys’ fees, and costs.

17 4. The monetary damages and restitution sought by Plaintiffs will be
18 established according to proof at trial. Upon information and belief, the claims of
19 individual Aggrieved Employees, including the named Plaintiff, is well under the
20 \$75,000 jurisdictional threshold for federal jurisdiction. No Aggrieved Employee
21 could reasonably be expected to receive a recovery of \$75,000 or more. Upon
22 information and belief, the total damages for the Represented Employees are not
23 anticipated to exceed \$5,000,000. Further, there is no federal question at issue
24 because all issues related to the payment wages alleged herein are based solely on
25 California law and statutes. Finally, the claims alleged herein concern only California
26 workers.

27 5. Please take notice that removal of this action to federal court under Class
28 Action Fairness Act on the alleged basis the amount in controversy exceeds \$5

1 million without admissible evidence will be in bad faith and, as such, may subject the
2 moving party or their counsel to monetary sanctions/attorneys' fees.

3 **JURISDICTION AND VENUE**

4 6. Pursuant to Article VI, § 10 of the California Constitution, subject matter
5 jurisdiction is proper in the Superior Court of California, County of San Diego, State
6 of California because Plaintiffs allege claims arising under California law.

7 7. This Court has jurisdiction over the Defendants because each is an
8 association, corporation, business entity, or individual that conducts substantial
9 business in the State of California.

10 8. Pursuant to § 395 of the California Code of Civil Procedure, venue is
11 proper in the Superior Court of California for the County of San Diego because
12 Defendant QW INSURANCE SOLUTIONS, LLC is a Washington limited liability
13 company doing business in California and which entity's current records with the
14 California Secretary of State does not indicate where it maintains its headquarters in
15 California.

16 **THE PARTIES**

17 9. Plaintiff VERNON BARNETT is an individual residing in California.

18 10. Defendant QW INSURANCE SOLUTIONS, LLC is a Washington
19 limited liability company doing business in the State of California.

20 11. The true names and capacities, whether individual, corporate, associate or
21 otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
22 Plaintiffs at this time. Plaintiffs therefore sues said Defendants by such fictitious names
23 pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will seek leave
24 to amend this Complaint to allege the true names and capacities of DOES 1 through 50
25 when their names are ascertained. Plaintiffs are informed and believe, and based
26 thereon allege, that each of the DOE Defendants is in some manner liable to Plaintiffs
27 for the events and actions alleged herein.

28 12. Unless otherwise specified by name, the named Defendants and DOES 1

1 through 50 will be collectively referred to as "DEFENDANT EMPLOYER" and/or
2 "Defendants."

3 13. Plaintiffs are informed and believe, and based thereon allege, that each
4 Defendant was acting as an agent, joint venturer, an integrated enterprise and/or alter
5 ego for each of the other Defendants and each were co-conspirators with respect to the
6 acts and the wrongful conduct alleged herein so that each is responsible for the acts of
7 the other pursuant to the conspiracy and in proximate connection with the other
8 Defendant(s).

9 14. Plaintiffs are informed and believe, and based thereon allege, that each
10 Defendant was acting partly within and partly without the scope and course of their
11 employment, and was acting with the knowledge, permission, consent, and ratification
12 of every other Defendant.

13 15. Plaintiffs are informed and believe, and based thereon allege that each of
14 the Defendants was an agent, managing general partner, managing member, owner, co-
15 owner, partner, employee, and/or representative of each of the Defendants and was at
16 all times material hereto, acting within the purpose and scope of such agency,
17 employment, contract and/or representation, and that each of them is jointly and
18 severally liable to Plaintiffs.

19 16. Plaintiffs are informed and believe, and based thereon allege that each of
20 the Defendants is liable to Plaintiffs under legal theories and doctrines including but
21 not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter
22 ego, based in part, on the facts set forth below.

23 17. Plaintiffs are informed and believe, and based thereon allege, that each
24 of the named Defendants are part of an integrated enterprise and have acted or
25 currently act as the employer and/or joint employer of the Plaintiffs/Class Members
26 making each of them liable for the wage and hour violations alleged herein.

27 18. Plaintiffs are informed and believe, and therefore allege, that one, more
28 than one, or each of the named Defendants are liable to the Plaintiffs under legal

1 theories and doctrines including but not limited to (1) the common law joint employer
2 doctrine and/or (2) Labor Code § 2810.3 because at least one of these named
3 Defendants worked as the central hub to an overall business operation by which the
4 interrelationship between these Defendants makes each of the Defendants liable for
5 the wage and hour violations alleged herein.

6 **GENERAL ALLEGATIONS**

7 19. Defendants are in the insurance business.

8 20. From about June 22, 2020, Defendants employed Plaintiff BARNETT as
9 a nonexempt worker in San Diego County until Defendants involuntarily terminated
10 him on April 8, 2022 without paying him all wages to which he had a right to receive
11 on the day of his termination in an amount to be proven at trial.

12 21. Defendants paid Plaintiffs and putative Class Members on an hourly
13 basis and sometimes paid them commissions and bonuses when eligible.

14 **Failure to Provide Payroll Records and Plaintiff's Personnel File.**

15 22. On April 8, 2022, Plaintiff, via counsel, sent a letter to DEFENDANT
16 EMPLOYER requesting access to Plaintiff's payroll records and employee personnel
17 file.

18 23. On April 29, 2022, DEFENDANT EMPLOYER, via counsel, responded
19 to the foregoing letter via email providing only Plaintiff's paystubs.

20 24. On May 9, 2022, DEFENDANT EMPLOYER, via counsel, sent another
21 written response via email to the foregoing letter providing portions of Plaintiff's
22 employee personnel file.

23 25. On May 10, 2022, Plaintiff, via counsel, sent an email to DEFENDANT
24 EMPLOYER's counsel indicating the employee personnel file production was
25 incomplete and instructing DEFENDANT EMPLOYER to provide the "background
26 report you procured, the consent form he signed to permit his employer to procure the
27 report, the disclosure form he likewise presumably signed vis-a-vis the background
28 check, all commission plans applicable to his pay, and a copy of his W-2."

1 26. On May 12, 2022, DEFENDANT EMPLOYER's counsel wrote via
2 email, "Thank you for your email - I received your 5/10 email yesterday, since it was
3 sent at 9:40pm EST, and I am tied up in depositions through EOD tomorrow. I'll
4 have a response to you ASAP, no later than EOD Monday."

5 27. On May 16, 2022, DEFENDANT EMPLOYER's counsel wrote via
6 email, "Following up on my last email, I am in the process of gathering some
7 additional items to provide to you, and will send them over to you with a written
8 response in the next couple of days."

9 28. To date, DEFENDANT EMPLOYER has failed to produce the
10 remaining portions of Plaintiff's personnel file.

11 **Minimum Wage/Regular Wage claims.**

12 29. Plaintiffs are informed and believe, and therefore allege, that from at
13 least four years before the filing of this action and continuing to the present, and
14 pursuant to company policy and/or practice and/or direction, DEFENDANT
15 EMPLOYER paid Plaintiffs and the putative Class minimum wages at less than the
16 rate required under state, federal, and local law.

17 30. This claim is premised on Plaintiffs' right to pursue all Labor Code claims
18 on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*
19 (2018) 23 Cal.App.5th 745.

20 **Failure to Pay State Overtime.**

21 31. From at least four years before the filing of this action and continuing to
22 the present, and pursuant to company policy and/or practice and/or direction,
23 DEFENDANT EMPLOYER failed to pay Plaintiffs and the putative Class state
24 overtime compensation and/or the correct amount of overtime compensation.

25 32. In particular, DEFENDANT EMPLOYER failed to accurately calculate
26 the regular rate of pay and, thus, paid Plaintiffs and the putative Class overtime
27 compensation at less than the rate required by law not only because Defendants paid
28 Plaintiffs at a wage rate less than what DEFENDANT EMPLOYER was required to

1 pay under local law as alleged above but also because Defendants failed to include
2 earned nondiscretionary bonuses and/or earned commissions into putative Class
3 Members' regular rate of pay for overtime pay purposes in violation of California law.
4 (See § 49.1.1 of the California Division of Labor Standards and Enforcement Policies
5 and Interpretations Manual.)

6 33. For example, on October 23, 2020, DEFENDANT EMPLOYER paid
7 Plaintiff BARNETT \$1,500 in commissions, yet in the corresponding pay period this
8 Aggrieved Employee worked 29.75 hours of overtime and DEFENDANT
9 EMPLOYER paid only \$28.875 per hour to this Aggrieved Employee based on the
10 employee's regular rate of pay of \$19.25 erroneously excluding the earned
11 commissions proceeds into the regular rate of pay for overtime pay purposes, resulting
12 in an underpayment of overtime in an amount to be proven at trial.

13 34. By further example, on November 20, 2020, DEFENDANT EMPLOYER
14 paid Plaintiff BARNETT \$1,925 in commissions, yet in the corresponding pay period
15 of November 8, 2020 to November 21, 2020 this Aggrieved Employee worked 13
16 hours of overtime and DEFENDANT EMPLOYER paid only \$28.875 per hour to this
17 Aggrieved Employee based on the employee's regular rate of pay of \$19.25
18 erroneously not including the commissions proceeds into the regular rate of pay for
19 overtime pay purposes, resulting in an underpayment of overtime in an amount to be
20 proven at trial.

21 35. Similarly, on December 24, 2020, DEFENDANT EMPLOYER paid
22 Plaintiff BARNETT \$2,055 in commissions, yet in the corresponding pay period of
23 December 6, 2020 to December 19, 2020 this Aggrieved Employee worked four hours
24 of overtime and DEFENDANT EMPLOYER paid only \$28.875 per hour to this
25 Aggrieved Employee based on the employee's regular rate of pay of \$19.25
26 erroneously not including the commissions proceeds into the regular rate of pay for
27 overtime pay purposes, resulting in an underpayment of overtime in an amount to be
28 proven at trial.

1 36. Likewise, on January 22, 2021, DEFENDANT EMPLOYER paid
2 Plaintiff BARNETT \$1,300 in commissions, yet in the corresponding pay period of
3 January 3, 2021 to January 16, 2021 this Aggrieved Employee worked four hours of
4 overtime and DEFENDANT EMPLOYER paid only \$28.875 per hour to this
5 Aggrieved Employee based on the employee's regular rate of pay of \$19.25
6 erroneously not including the commissions proceeds into the regular rate of pay for
7 overtime pay purposes, resulting in an underpayment of overtime in an amount to be
8 proven at trial.

9 37. Again, on February 19, 2021, DEFENDANT EMPLOYER paid Plaintiff
10 BARNETT \$1,450 in commissions, yet in the corresponding pay period of January 31,
11 2021 to February 13, 2021 this Aggrieved Employee worked ten hours of overtime and
12 DEFENDANT EMPLOYER paid only \$28.875 per hour to this Aggrieved Employee
13 based on the employee's regular rate of pay of \$19.25 erroneously not including the
14 commissions proceeds into the regular rate of pay for overtime pay purposes, resulting
15 in an underpayment of overtime in an amount to be proven at trial.

16 38. Similarly, on March 19, 2021, DEFENDANT EMPLOYER paid Plaintiff
17 BARNETT \$1,180 in commissions, yet in the corresponding pay period of February
18 28, 2021 to March 13, 2021 this Aggrieved Employee worked nine hours of overtime
19 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved
20 Employee based on the employee's regular rate of pay of \$19.44 erroneously not
21 including the commissions proceeds into the regular rate of pay for overtime pay
22 purposes, resulting in an underpayment of overtime in an amount to be proven at trial.

23 39. Likewise, on April 23, 2021, DEFENDANT EMPLOYER paid Plaintiff
24 BARNETT \$1,835 in commissions, yet in the corresponding pay period of April 11,
25 2021 to April 24, 2021 this Aggrieved Employee earned \$85.87 in overtime and
26 DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the
27 employee's regular rate of pay of \$19.44 erroneously not including the commissions
28 proceeds into the regular rate of pay for overtime pay purposes, resulting in an

1 underpayment of overtime in an amount to be proven at trial.

2 40. Again, on August 20, 2021, DEFENDANT EMPLOYER paid Plaintiff
3 BARNETT \$1,135 in commissions, yet in the corresponding pay period of August 1,
4 2021 to August 14, 2021 this Aggrieved Employee earned \$16.40 in overtime and
5 DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the
6 employee's regular rate of pay of \$19.44 erroneously not including the commissions
7 proceeds into the regular rate of pay for overtime pay purposes, resulting in an
8 underpayment of overtime in an amount to be proven at trial.

9 41. Similarly, on November 19, 2021, DEFENDANT EMPLOYER paid
10 Plaintiff BARNETT \$4,530 in commissions, yet in the corresponding pay period of
11 November 7, 2021 to November 20, 2021 this Aggrieved Employee earned \$308.60 in
12 overtime and DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour
13 based on the employee's regular rate of pay of \$19.44 erroneously not including the
14 commissions proceeds into the regular rate of pay for overtime pay purposes, resulting
15 in an underpayment of overtime in an amount to be proven at trial.

16 42. On November 26, 2021, DEFENDANT EMPLOYER paid Plaintiff
17 BARNETT \$500 in a referral bonus, yet in the corresponding pay period of November
18 7, 2021 to November 20, 2021 this Aggrieved Employee worked 24 hours of overtime
19 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved
20 Employee based on the employee's regular rate of pay of \$19.44 erroneously not
21 including the referral bonus into the regular rate of pay for overtime pay purposes,
22 resulting in an underpayment of overtime in an amount to be proven at trial.

23 43. On December 23, 2021, DEFENDANT EMPLOYER paid Plaintiff
24 BARNETT \$5,740 in commissions, yet in the corresponding pay period of December
25 5, 2021 to December 18, 2021 this Aggrieved Employee worked 3.5 hours of overtime
26 and DEFENDANT EMPLOYER paid only \$29.16 per hour to this Aggrieved
27 Employee based on the employee's regular rate of pay of \$19.44 erroneously not
28 including the earned commissions into the regular rate of pay for overtime pay

1 purposes, resulting in an underpayment of overtime in an amount to be proven at trial.

2 44. On January 21, 2022, DEFENDANT EMPLOYER paid Plaintiff
3 BARNETT \$1,685 in commissions, yet in the corresponding pay period of January 1,
4 2022 to January 15, 2022 this Aggrieved Employee earned \$69.45 in overtime and
5 DEFENDANT EMPLOYER paid this overtime at only \$29.16 per hour based on the
6 employee's regular rate of pay of \$19.44 erroneously not including the commissions
7 proceeds into the regular rate of pay for overtime pay purposes, resulting in an
8 underpayment of overtime in an amount to be proven at trial.

9 45. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
10 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
11 *USA, Inc.* (2018) 23 Cal.App.5th 745.

12 **Meal and Rest Break Claims.**

13 46. Plaintiffs are informed and believe, and therefore allege, that from at least
14 four years before the filing of this action and continuing to the present, and pursuant to
15 company policy and/or practice and/or direction, DEFENDANT EMPLOYER failed to
16 authorize and/or permit Plaintiffs from taking all their compliant off-duty meal and rest
17 breaks during the required timeframe as required by law and failed to pay them
18 premium pay, in an amount to be proven at trial.

19 47. Plaintiffs are informed and believe, and therefore allege, that Plaintiff
20 BARNETT and, upon information and belief, other putative Class Members' meal
21 breaks were late, missed, or noncompliant because of work demands imposed on them
22 by management and/or the demands of their customers, among other reasons.

23 48. Defendants never paid Plaintiff BARNETT and, upon information and
24 belief, other putative Class Members premium pay for missed and noncompliant meal
25 breaks.

26 49. With respect to rest break violations, DEFENDANT EMPLOYER
27 required Plaintiffs to be available by phone for calls or texts or have email access and
28 to keep such devices on--even during rest periods--and to remain vigilant and

1 responsive to calls or emails when needs arose during working hours and/or during off
2 work times, among other instances during which DEFENDANT EMPLOYER had an
3 obligation to pay premium pay for Plaintiffs' missed rest breaks.

4 50. Pursuant to this policy, Plaintiffs maintained a cell phone or similar
5 electronic device they kept with them in operating condition at all times making any
6 breaks available to them not a rest break in compliance with California law and
7 DEFENDANT EMPLOYER, upon information and belief, failed to pay these
8 employees for rest breaks.

9 51. Because of the foregoing policies, Defendants prevented Plaintiffs from
10 taking all their uninterrupted rest breaks to which they had the right under California
11 law, in an amount to be proven at trial. (*See Augustus v. ABM Security Services* (2016)
12 2 Cal.5th 257.)

13 52. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
14 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
15 *USA, Inc.* (2018) 23 Cal.App.5th 745.

16 **Failure to Reimburse.**

17 53. During all times relevant, and pursuant to company policy and/or practice
18 and/or direction, Defendants required Plaintiff BARNETT and, upon information and
19 belief, other employees, to work from home as a condition of his/her employment and
20 required Plaintiffs and the Class to use their home internet, and incur various other
21 expenses associated with their work for Defendants.

22 54. The unreimbursed purchases Plaintiffs and proposed Class Members
23 were required to make to perform their work include, but are not limited to internet
24 connections, office space in their homes devoted to work, and work-related office
25 supplies/equipment.

26 55. Plaintiffs are informed and believe, and thereupon allege, that Defendants'
27 requirement for employees to use their supplies and equipment to perform their work
28 duties without reimbursement was an attempt to defray the costs onto its employees.

1 56. Defendants passed the cost of doing business onto its employees by
2 requiring, without reimbursement, their employees to purchase equipment, tools, and
3 services necessary to perform work for Defendants.

4 57. This claim is also premised, in part, on Plaintiffs' right to pursue all Labor
5 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
6 *USA, Inc.* (2018) 23 Cal.App.5th 745.

7 **Erroneous Wage Statements in Violation of Labor Code § 226.**

8 58. During all times relevant, and pursuant to company policy and/or practice
9 and/or direction and continuing to the present, and pursuant to company policy and/or
10 practice and/or direction, Defendants issued confusing and inaccurate wage and
11 earning statements to Plaintiffs, which wage and earning statements failed to comply
12 with Labor Code § 226 because they failed to, among other things, identify their
13 correct rates of pay and/or correct gross and net earnings during the applicable pay
14 period.

15 59. As a standalone claim, Defendants also issued confusing and inaccurate
16 wage and earning statements to Plaintiffs that in some cases omitted any reference to
17 the number of overtime hours worked, among other required entries, as part of the
18 "detachable part of the check" within the requirements of Labor Code § 226(a).

19 60. As alleged above, for example, on November 20, 2020, Defendants issued
20 Plaintiff BARNETT a wage and earning statement that said Defendants paid him
21 \$246.98 in overtime, but the number of overtime hours worked was missing where
22 instead it erroneously reported that Plaintiff worked "0" overtime hours.

23 61. Similarly, on December 24, 2020, Defendants issued Plaintiff BARNETT
24 a wage and earning statement that said Defendants paid him \$154.99 in overtime, but
25 the number of overtime hours worked was missing where instead it erroneously
26 reported that Plaintiff worked "0" overtime hours.

27 62. Likewise, on January 22, 2021, Defendants issued Plaintiff BARNETT a
28 wage and earning statement that said Defendants paid him \$61.32 in overtime, but the

1 number of overtime hours worked was missing where instead it erroneously reported
2 that Plaintiff worked “0” overtime hours.

3 63. Again, on February 19, 2021, Defendants issued Plaintiff BARNETT a
4 wage and earning statement that said Defendants paid him \$36.25 in overtime, but the
5 number of overtime hours worked was missing where instead it erroneously reported
6 that Plaintiff worked “0” overtime hours.

7 64. On March 19, 2021, Defendants issued Plaintiff BARNETT a wage and
8 earning statement that said Defendants paid him \$44.85 in overtime, but the number of
9 overtime hours worked was missing where instead it erroneously reported that Plaintiff
10 worked “0” overtime hours.

11 65. On April 23, 2021, Defendants issued Plaintiff BARNETT a wage and
12 earning statement that said Defendants paid him \$85.87 in overtime, but the number of
13 overtime hours worked was missing where instead it erroneously reported that Plaintiff
14 worked “0” overtime hours.

15 66. On August 20, 2021, Defendants issued Plaintiff BARNETT a wage and
16 earning statement that said Defendants paid him \$16.40 in overtime, but the number of
17 overtime hours worked was missing where instead it erroneously reported that Plaintiff
18 worked “0” overtime hours.

19 67. On November 19, 2021, Defendants issued Plaintiff BARNETT a wage
20 and earning statement that said Defendants paid him \$308.60 in overtime, but the
21 number of overtime hours worked was missing where instead it erroneously reported
22 that Plaintiff worked “0” overtime hours.

23 68. On December 23, 2021, Defendants issued Plaintiff BARNETT a wage
24 and earning statement that said Defendants paid him \$640.07 in overtime, but the
25 number of overtime hours worked was missing where instead it erroneously reported
26 that Plaintiff worked “0” overtime hours.

27 69. On January 21, 2021, Defendants issued Plaintiff BARNETT a wage and
28 earning statement that said Defendants paid him \$69.45 in overtime, but the number of

1 overtime hours worked was missing where instead it erroneously reported that Plaintiff
2 worked “0” overtime hours.

3 70. The above problems made interpretation of the foregoing wage and
4 earning statements hopelessly confusing.

5 71. In addition to the foregoing claims under Labor Code § 226, Plaintiffs’
6 paystubs and those of similarly situated employees of Defendants were inaccurate
7 because Defendants failed to pay them all wages, as alleged above, supporting a
8 derivative claim under Labor Code § 226.

9 72. This claim is also premised, in part, on Plaintiffs’ right to pursue all Labor
10 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
11 *USA, Inc.* (2018) 23 Cal.App.5th 745.

12 **Facts Relating to Derivative Claims, such as Labor Code §§ 203, 204, 204b, etc.**

13 73. Pursuant to the above-mentioned policies, DEFENDANT EMPLOYER
14 failed to pay all wages to which Plaintiffs had the right to receive under the law.

15 74. When Plaintiff BARNETT and putative Class Members’ employment
16 ended, DEFENDANT EMPLOYER failed to provide Plaintiffs all unpaid wages in
17 their final paycheck or in a timely manner.

18 75. Further, during Plaintiffs’ employment, their pay was untimely in
19 violation of the Labor Code.

20 76. Plaintiffs are informed and believe and based thereon allege that, to date,
21 DEFENDANT EMPLOYER has not paid Plaintiffs all of Plaintiffs’ wages due and
22 payable, in an amount to be proven at trial.

23 77. Derivative claims also premised, in part, on Plaintiffs’ right to pursue all
24 Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*
25 *Services USA, Inc.* (2018) 23 Cal.App.5th 745.

26 **ICRAA Claims.**

27 78. Plaintiff is informed and believes and based thereon alleges that upon
28 Plaintiff BARNETT’s hiring, as part of Defendants’ routine practice, policy, and

1 procedure, Defendants required Plaintiff, a job applicant at that time, to sign various
2 forms that purported to allow Defendants to obtain a consumer investigative report on
3 the Plaintiff via a third party.

4 79. Plaintiff is informed and believes and based thereon alleges that
5 Defendants' purported permission to conduct the foregoing investigative consumer
6 report was based, in part, on an unlawful form, the contents of which are incorporated
7 herein by reference as though alleged herein upon receipt of the form via the discovery
8 process.

9 80. Plaintiff is informed and believes and based thereon alleges that the
10 foregoing form Defendants used violates Civ. Code § 1786.16 in a manner described in
11 more detail at time of trial.

12 81. Similarly, by law before an employer can procure a report on an employee
13 or job applicant, the employer must certify to the furnishing agency that it (the
14 employer) complied, and will continue to comply, with various requirements of the
15 ICRAA. Civ. Code §1786.16(a)(4).

16 82. Plaintiff is informed and believes and based thereon alleges there is no
17 evidence of certifications whatsoever from the Defendants as required under the
18 ICRAA.

19 83. Accordingly, Plaintiff is informed and believes and based thereon alleges
20 that Defendants violated the ICRAA by procuring a consumer report on the Plaintiff
21 without complying with the certification requirements set forth in the FCRA and the
22 ICRAA.

23 84. Plaintiff, via counsel, requested Defendants to provide a copy of the
24 abovementioned form and related records, but Defendants thus far have refused to
25 produce the foregoing, another claim under the ICRAA Plaintiff is pursuing.

26 **REPRESENTATIVE ACTION (PAGA) CLAIMS**

27 85. This is a wage and hour representative action filed pursuant to the
28 PAGA, Labor Code §§ 2698, 2699 generally consists of the following group:

**All persons Defendants employed in the State of California
from May 25, 2021 to the present.**

86. All members of the Aggrieved groups will be referred to as the
“Aggrieved Employees.”

87. The “PAGA Period” means from **May 25, 2021** to the present, the
timeframe where the scope of statute allows Plaintiffs to recover wages and penalties.

88. California law provides that an employee may file an action against an
employer to recover penalties for violations of the Labor Code and Wage Orders
provided the aggrieved employee files an action on behalf of him or himself and
similarly-situated current and former employees.

89. At all material times, DEFENDANT EMPLOYER and DOES 1 through
50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of
Aggrieved Employees’ employer, within the meaning of California Labor Code § 558,
who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
Labor Code or any provision regulating hours and days of work in any Order of the
Industrial Welfare Commission and, as such, are subject to penalties for each
underpaid employee as set for in Labor Code § 558.

90. As set forth in further detail below, because of the analysis and
investigation of the Plaintiffs’ claims, Plaintiffs’ attorneys sent correspondence to the
California Labor and Workforce Development Agency (“LWDA”) and to
DEFENDANT EMPLOYER informing DEFENDANT EMPLOYER of their claims
and their intent to pursue litigation.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

91. As to penalty claims under the Labor Code Private Attorney General
Act, on or about **May 25, 2021**, Plaintiffs began to exhaust his/her administrative
remedies by sending correspondence to the LWDA and via certified mail to
DEFENDANT EMPLOYER indicating Plaintiffs are pursuing the claims alleged in
this Complaint.

1 92. By the time the statutory period for Plaintiffs expires from the first letter
2 alleged above and the LWDA likely will not have served Plaintiffs with notice of
3 intent to assume jurisdiction over the applicable penalty claims and did not provide
4 notice as set forth in Labor Code § 2699.3(a)(2)(A) within the statutory period, but
5 more to follow as time expires before this Complaint is amended to report the actual
6 facts.

7 93. Therefore, once the statutory waiting period expires based on the
8 presumed facts above, Plaintiffs will have exhausted all applicable administrative
9 remedies thus permitting Plaintiffs the ability to seek the penalty claims sought in this
10 Complaint.

11 **CLASS ACTION ALLEGATIONS**

12 94. Plaintiffs bring this action on behalf of himself and all others similarly
13 situated as a Class Action pursuant to § 382 of the Code of Civil Procedure.

14 95. Plaintiffs seek to represent the classes and/or subclasses composed of
15 and defined as follows:

16 **All of Defendants' current or former nonexempt employees**
17 **who worked in the state of California from May 25, 2018 to**
18 **the present.**

19 96. Plaintiffs also seek to represent the following subclasses composed of
20 and defined as follows:

21 **Minimum/Regular Wage Subclass:** All Members of the Class who
22 during the relevant period, failed to receive minimum/regular wages
23 for all hours worked.

24 **State Overtime Subclass:** All Members of the Class who, during the
25 relevant period, worked more than eight hours per day and/or in 40
26 hours per week and who did not receive overtime pay at the requisite
27 overtime rate of pay.
28

1 **Meal Break Subclass:** All Members of Plaintiff Class who, during
2 the applicable statute of limitations period (1) worked for any of the
3 Defendants and were not provided compliant meal breaks and (2)
4 were not provided one hour of pay at their regular rate of
5 compensation in lieu thereof.

6 **Rest Break Subclass:** All Members of Plaintiff Class who, during the
7 applicable statute of limitations period (1) worked for any of the
8 Defendants and were not provided compliant rest breaks or paid for
9 time spent during rest breaks and (2) were not provided one hour of
10 pay at their regular rate of compensation in lieu thereof.

11 **Unreimbursed Expense Subclass:** All Members of the Class who,
12 during the relevant period, Defendants did not reimburse for
13 reasonable and necessary expenses.

14 **Wage Statement Subclass:** All Members of the Class who, during
15 the applicable statute of limitations period, did not receive accurate
16 itemized wage statements as required by Labor Code § 226.

17 **Waiting Time Subclass:** All Members of the Class who, during the
18 applicable limitations period, did not receive all wages due in a timely
19 manner as required by Labor Code §§ 201-204.

20 **UCL Subclass:** All Members of the Class, who, during the relevant
21 period, are owed restitution in the form of (1) unreimbursed expenses
22 and/or (2) wages earned and unpaid because of Defendants' uniform
23 pay policies and procedures.

24 97. The above-mentioned class-members will collectively be referred to as
25 "Class Members."

26 98. Plaintiffs reserve the right under the California Rules of Court, to
27 amend or modify the class description with greater specificity or further division into
28 subclasses or limitation to particular issues.

99. This action is brought and may properly be maintained as a Class Action
under the provisions of § 382 of the Code of Civil Procedure because there is a
well-defined community of interest in the litigation and the proposed Class is easily
ascertainable.

1 **A. Numerosity.**

2 100. The potential members of the Class as defined are so numerous or many,
3 that joinder of all the members of the Class is impracticable.

4 101. While the precise number of Class Members has not been determined at
5 this time, Plaintiffs are informed and believe, and based thereon allege, that
6 DEFENDANT EMPLOYER currently employs, and during the relevant time periods
7 employed, a sufficient number of employees to warrant class certification if all other
8 elements are met.

9 102. Accounting for employee turnover during the relevant periods necessarily
10 increases the number of potential members of the Class.

11 **B. Commonality.**

12 103. There are questions of law and fact common to the Class that predominate
13 over any questions affecting only individual Class Members.

14 104. Common questions of law and fact include, without limitation and subject
15 to possible further amendment, the following:

- 16 a. Whether Defendants violated the Labor Code and the
17 applicable Wage Order by not fully compensating
18 Plaintiffs and the Class by failing to pay minimum wage
19 and/or regular wages as required by law;
20 b. Whether Defendants' policy or practice of not
21 paying Plaintiffs and putative class members
22 overtime compensation for the hours they worked
23 over 40 in a workweek or eight hours in a day is
24 illegal under Labor Code §§ 510, 1771, 1774, 1776,
25 1194, and the applicable Wage Order;
26 c. Whether Defendants violated the meal and rest break
27 provisions of California law by failing to provide
28 Plaintiffs with duty-free 30-minute meal breaks for shifts

of five hours or more and/or duty free 10-minute rest breaks as required by law and Defendants' failure to pay premium pay as a result thereof;

- d. Whether Defendants violated Labor Code §§ 2802 by failing to reimburse Plaintiffs for business expenses;
- e. Whether Defendants violated Labor Code §§ 226 by not providing accurate paystubs;
- f. Whether Defendants' policy or practice of not paying hourly employees all their wages due in their final paychecks immediately upon involuntary termination or when 72 hours' notice was provided before voluntary resignation, is unlawful under Labor Code §§ 201, 202 and/or 203;
- g. Whether Defendants violated the PAGA under California Labor Code §§ 2698, 2699, *et seq.*, by committing the wrongful conduct as alleged in this Complaint; and
- h. Whether Plaintiffs and the members of the Class May recover remedies pursuant to Business & Professions Code §§ 17200, *et seq.*

C. Typicality.

105. Plaintiffs' claims are typical of the claims of the Class because Plaintiffs and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct and policies in violation of laws, regulations that have the force and effect of law and statutes as alleged herein.

D. Adequacy of Representation.

106. Plaintiffs are members of the Class, do not have any conflicts of interest

1 with other Class Members, and will prosecute the case vigorously on behalf of the
2 Class.

3 107. Counsel representing Plaintiffs and the putative Class are competent and
4 experienced in litigating employment class actions, including wage and overtime
5 class actions.

6 108. Plaintiffs will fairly and adequately represent and protect the interests of
7 the Class Members.

8 **E. Superiority of Class Action.**

9 109. A class action is superior to other available means for the fair and
10 efficient adjudication of this controversy because individual joinder of all Class
11 Members is not practicable, and questions of law and fact common to the Class
12 predominate over any questions affecting only individual members of the Class.

13 110. Each Class Member was damaged or suffered injury and may recover by
14 reasons of Defendants' illegal policies and/or practices.

15 111. Class Action treatment will allow those similarly situated persons to
16 litigate their claims in the manner that is most efficient and economical for the parties
17 and the judicial system.

18 112. Plaintiffs are unaware of any difficulties that are likely to be encountered
19 in the management of this action that would preclude maintenance as a Class Action.

20 113. For the reasons alleged in this Complaint, this action should be certified
21 as a Class Action.

FIRST CAUSE OF ACTION

**Individual, Class, and Representative Claim under the PAGA for
Failure to Pay State and Local Minimum/Regular Wages in Violation of
California Labor Code §§ 216, 218, 218.5, 223, 1182.12, 1194,
1194.2, 1197, 1198, and the applicable Industrial Welfare Commission (“IWC”)
Wage Order
(Against all Defendants)**

114. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

115. Pursuant to Labor Code §§ 216, 223, 218, 218.5, 1182.12, 1194, 1194.2, and 1197 it is unlawful for a California employer to suffer or permit an employee to work without paying wages for all hours worked, as required by the applicable IWC Wage Order.

116. During all times relevant, the applicable IWC Wage Order, including but not limited to Wage Order 4 and/or 5, applied to Plaintiffs’ and the Class members’ employment with Defendants.

117. Pursuant to the applicable IWC Wage Order, “hours worked” include the time during which an employee is “suffered or permitted to work, whether or not required to do so.”

118. Every employer must pay each employee minimum wage as required under state law and, where applicable and if higher, local law.

119. During all times relevant, Plaintiffs and putative Class Members are informed and believe, and based thereupon allege, that Class Members including Plaintiffs, were not paid minimum/regular wages for all hours suffered or permitted to work in violation of state and, where applicable, local law and/or their agreement with DEFENDANT EMPLOYER.

120. Labor Code § 1194.2, subdivision (a) provides that, in an action to recover wages because of the payment of a wage less than the minimum wage fixed by IWC

1 Wage Orders, an employee may recover liquidated damages in an amount equal to the
2 wages unlawfully unpaid and interest thereon.

3 121. At all material times, DEFENDANT EMPLOYER and DOES 1 through
4 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
5 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
6 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
7 Labor Code or any provision regulating hours and days of work in any Order of the
8 Industrial Welfare Commission and, as such, are subject to penalties for each
9 underpaid employee as set for in Labor Code § 558.

10 122. In committing the violations of state law as herein alleged, Plaintiffs are
11 informed and believe based there upon allege that Defendants have knowingly and
12 willfully refused to perform their obligations to compensate Aggrieved Employees for
13 all wages earned and all hours worked.

14 123. As a direct result, Aggrieved Employees have suffered and continue to
15 suffer, substantial losses related to the use and enjoyment of such compensation,
16 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
17 compel Defendants to fully perform their obligations under state law, all to their
18 respective damage in amounts according to proof at trial and within the jurisdictional
19 limitations of this Court.

20 124. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
21 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
22 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
23 pay period for each subsequent violation in which DEFENDANT EMPLOYER
24 violated the minimum wage and/or regular wage provisions of the Labor Code,
25 including but not limited to §§ 216, 218, 218.5, 223, 1182.12, 1194, 1194.2, and 1197,
26 the exact amount of the applicable penalty is all in an amount to be shown according to
27 proof at trial.

28 125. Additionally, pursuant to Labor Code § 2699, Plaintiffs and Class

Members seek to recover from Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein.

126. Upon information and belief, Class Members including Plaintiffs should have received minimum wages in a sum according to proof during all times relevant to this action.

127. Upon information and belief, Defendants have intentionally failed and refused, and continue to fail and refuse, to pay Class Members including Plaintiffs minimum wages for all time suffered or permitted to work.

128. Plaintiffs and the Class request the recovery of the unpaid minimum, waiting time penalties, liquidated damages, interest, attorneys' fees, and costs in an amount to be determined at trial.

SECOND CAUSE OF ACTION

Individual, Class, and Representative Claim under the PAGA for Failure to Pay State Overtime and/or Double-Time Compensation in Violation of California Labor Code §§ 510, 1194, 1198, and the Applicable Wage Order

(Against all Defendants)

129. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

130. During all times relevant, the applicable Wage Order, including but not limited to Wage Order 4 and/or 5, applied to Plaintiffs' employment with Defendants.

131. Pursuant to the applicable Wage Order, "hours worked" include the time during which an employee is "suffered or permitted to work, whether or not required to do so."

132. For each hour (or fraction thereof) an employee works over forty (40) hours in a week or more than eight (8) hours in a workday the employer must pay the rate of one and a half times the employee's regular hourly wage.

133. For each hour (or fraction thereof) an employee works more than twelve

1 (12) hours in one day or more than eight (8) hours a day on the seventh consecutive
2 day of work, the employee must be compensated at the rate of no less than twice the
3 regular rate of pay for that employee.

4 134. According to § 49.1.1 of the California Division of Labor Standards and
5 Enforcement Policies and Interpretations Manual, “In California, as with the federal
6 FLSA, overtime is computed based on the regular rate of pay. The regular rate of pay
7 includes many different kinds of remuneration, for example: hourly earnings, salary,
8 piecework earnings, *commissions*, *certain bonuses*, and the value of meals and
9 lodging.” (Emphasis added.)

10 135. As alleged in this Complaint, DEFENDANT EMPLOYER failed to pay
11 all overtime compensation to the Plaintiffs and the Class because DEFENDANT
12 EMPLOYER, among other things, failed to include bonuses and/or fringe benefits
13 earned towards the overtime hourly rate in violation of California law, among other
14 reasons alleged in this Complaint (see § 49.1.1 of the California Division of Labor
15 Standards and Enforcement Policies and Interpretations Manual).

16 136. Additionally, from at least four years before the filing of this action and
17 continuing to the present, and pursuant to company policy and/or practice and/or
18 direction, Plaintiffs are informed and believe, and therefore allege, that Defendants
19 failed to pay its employees the correct rate of minimum/regular wages and, as a result,
20 the amount of overtime paid was too low.

21 137. At all material times, DEFENDANT EMPLOYER and DOES 1 through
22 50 were and/or are Aggrieved Employees’ employers or persons acting on behalf of
23 Aggrieved Employees’ employer, within the meaning of California Labor Code § 558,
24 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
25 Labor Code or any provision regulating hours and days of work in any Order of the
26 Industrial Welfare Commission and, as such, are subject to penalties for each
27 underpaid employee as set for in Labor Code § 558.

28 138. In committing the violations of state law as herein alleged, Defendants

1 have knowingly and willfully refused to perform their obligations to compensate
2 Aggrieved Employees for all wages earned and all hours worked.

3 139. As a direct result, Aggrieved Employees have suffered and continue to
4 suffer, substantial losses related to the use and enjoyment of such compensation,
5 wages, lost interest on such monies and expenses and attorney's fees in seeking to
6 compel Defendants to full perform their obligation under state law, all to their
7 respective damage in amounts according to proof at trial and within the jurisdictional
8 limitations of this Court.

9 140. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
10 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
11 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
12 pay period for each subsequent violation in which DEFENDANT EMPLOYER
13 violated the overtime provisions of the Labor Code, including but not limited to §§ 510
14 at 1194, the exact amount of the penalties sought is in an amount to be shown
15 according to proof at trial.

16 141. Additionally, pursuant to Labor Code § 2699, Plaintiffs seek to recover
17 from Defendants, and each of them, penalties, attorneys' fees, and costs incurred
18 herein.

19 142. Based on the misconduct alleged in this Complaint, Plaintiffs and
20 similarly situated members of the Class have suffered damages in an amount to be
21 proven at trial.

22 143. Plaintiffs on behalf of herself and Class requests the unpaid wages,
23 waiting time penalties, interest, attorneys' fees, costs, liquidated damages, and any
24 other remedies allowed by law in an amount to be proven at trial.

THIRD CAUSE OF ACTION

**Individual, Class, and Representative Claim under the PAGA for
Failure to Comply with the Meal Break Requirements of Labor Code §§ 226.7,
512, 1198, and the applicable IWC Wage Order
(Against all Defendants)**

144. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

145. Plaintiffs are informed and believe, and based thereon allege, that by failing to provide duty-free meal periods of at least thirty (30) minutes for shifts of five hours or more, which began before the end of the fifth hour of work, and failing to pay such employees premium wages of one (1) hour of pay at their regular rate of compensation for each workday the meal period was not provided, Defendants willfully violated the provisions of Labor Code § 226.7, and the applicable IWC Wage Order.

146. Based on the misconduct alleged in this Complaint, Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to pay all premium wages owed.

147. At all material times, DEFENDANT EMPLOYER and DOES 1 through 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of Aggrieved Employees' employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set for in Labor Code § 558.

148. In committing the violations of state law as herein alleged, Plaintiffs are informed and believe and based thereon allege that Defendants have knowingly and willfully refused to perform their obligations to compensate Aggrieved Employees for all wages earned and all hours worked.

149. As a direct result, Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such compensation, wages, lost interest on such monies and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

150. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation in which all culpable Defendants violated Cal. Labor Code § 226.7, the exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

151. Wherefore, Plaintiffs request all remedies available to them and to the putative Class.

FOURTH CAUSE OF ACTION

Individual, Class, and Representative Claim under the PAGA for Failure to Comply with the Rest Break Requirements of Labor Code §§ 226.7, 512, 1198, and the applicable IWC Wage Order (Against all Defendants)

152. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

153. Plaintiffs are informed and believe, and based thereon allege, that based on the misconduct alleged in this Complaint, Defendants failed to authorize and permit Plaintiffs to receive a rest period of at least 10 minutes on a separate hourly basis when paid commissions or otherwise to provide paid ten-minute rest periods for every four (4) hours or major fraction thereof worked per day, and by failing to provide premium wages at the regular rate of pay when these periods were not permitted or authorized, Defendants willfully violated the provisions of Labor Code § 226.7, and the applicable

1 IWC Wage Order.

2 154. Plaintiffs are informed and believe, and based thereon allege, that based
3 on the misconduct alleged in this Complaint, Defendants failed to pay premium pay for
4 Plaintiffs' missed meal breaks DEFENDANT EMPLOYER failed to provide or
5 authorize.

6 155. At all material times, DEFENDANT EMPLOYER and DOES 1 through
7 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
8 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
9 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
10 Labor Code or any provision regulating hours and days of work in any Order of the
11 Industrial Welfare Commission and, as such, are subject to penalties for each
12 underpaid employee as set for in Labor Code § 558.

13 156. In committing the violations of state law as herein alleged, Plaintiffs are
14 informed and believe and based thereon allege that Defendants have knowingly and
15 willfully refused to perform their obligations to compensate Aggrieved Employees for
16 all wages earned and all hours worked.

17 157. As a direct result, Aggrieved Employees have suffered and continue to
18 suffer, substantial losses related to the use and enjoyment of such compensation,
19 wages, lost interest on such monies and expenses and attorneys' fees in seeking to
20 compel Defendants to fully perform their obligations under state law, all to their
21 respective damage in amounts according to proof at trial and within the jurisdictional
22 limitations of this Court.

23 158. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
24 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
25 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
26 pay period for each subsequent violation in which all culpable Defendants violated Cal.
27 Labor Code § 226.7, the exact amount of the applicable penalty is all in an amount to
28 be shown according to proof at trial.

1 159. Wherefore, Plaintiffs request all remedies available to them and to the
2 putative Class.

3 **FIFTH CAUSE OF ACTION**

4 **Individual, Class, and Representative Claim under the PAGA for**
5 **Failure to Indemnify/Reimburse Business Expenses in Violation of**
6 **California Labor Code § 1198, 2802, and the applicable Wage Order**
7 **(Against all Defendants)**

8 160. Plaintiffs re-allege and incorporate by reference the foregoing allegations
9 as though set forth herein.

10 161. California Labor Code § 2802 requires employers to indemnify their
11 employees for expenses and losses incurred while discharging their duties or
12 obedience to the directions of their employer.

13 162. California Labor Code § 2804 mandates that this statutory right cannot be
14 waived.

15 163. The Plaintiffs incurred losses in obedience to the directions of
16 Defendants in the form of purchase of work-related expenses described in this
17 Complaint.

18 164. As a direct result of Defendants' violation of California Labor Code §
19 2802, the Plaintiffs and Class Members suffered and continue to suffer substantial
20 losses related to unpaid expenses, the use and enjoyment of monies owed, lost interest
21 on monies owed, and attorneys' fees in an amount to be proven at the time of trial.

22 165. Defendants derive an unjust and inequitable economic benefit in failing
23 to comply with the law regarding indemnification and reimbursement of employees.

24 166. Plaintiffs request all remedies available to them and to the putative Class
25 for Defendants' violations of California Labor Code § 2802, including but not limited
26 to back-owed reimbursement for work-related expenses, interest, statutory and
27 equitable attorneys' fees, costs, and applicable penalties in an amount to be proven at
28 trial.

SIXTH CAUSE OF ACTION

**Individual, Class, and Representative Claim under the PAGA for
Violations of California Labor Code §§ 226 and 1198**

(Against all Defendants)

167. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

168. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in pertinent part, that every employer shall, “semimonthly or at the time of each payment of wages, shall furnish to his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if 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..., (8) the name and address of the legal entity that is the employer. . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. . .” (Labor Code § 226 subdivision (a).)

169. Likewise, California Labor Code § 226, subdivisions (b) and (c), require employers doing business in the State of California to provide current and former employees access to their payroll records.

170. Upon information and belief, during all times relevant to this action, Defendants did not provide accurate wage statements throughout the Class Period.

171. Plaintiffs allege that on numerous occasions, an exact amount by which will be proven at trial, Defendants violated various provisions of § 226, including but not limited to subdivisions (a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(8), and (a)(9) by failing to provide Plaintiffs accurate itemized statement in writing accurately showing gross wages earned, total hours worked by the employee, net wages earned, among other things.

172. At all material times DEFENDANT EMPLOYER and DOES 1 through 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of Aggrieved Employees' employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating business hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558.

173. In committing the violations of state law as herein alleged, Defendants have knowingly and willfully refused to perform their obligations to compensate Aggrieved Employees for all wages earned and all hours worked.

174. As a direct result, Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such compensation, wages, lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

175. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation in which DEFENDANT EMPLOYER violated Labor Code § 226, the exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

176. For Defendants' misconduct as alleged in this Complaint, Plaintiffs seek damages, penalties, costs, and attorneys' fees pursuant to Labor Code §§ 226, 226.3, and 226.6 in an amount to be proven at trial.

SEVENTH CAUSE OF ACTION

**Individual, Class, and Representative Claim under the PAGA for
Failure to Pay Timely Earned Wages during Employment and
Upon Separation of Employment in Violation of
California Labor Code §§ 201, 202, 203,
204 and/or 204b, 218.5, and 218.6**

(Against all Defendants)

177. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

178. Pursuant to Labor Code § 201, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

179. Pursuant to Labor Code § 202, "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."

180. Labor Code § 203 provides, in pertinent part: "If an employer willfully fails to pay, without abatement or reduction, ... 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. ..."

181. Pursuant to Labor Code § 204, "all 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."

1 182. Alternatively, pursuant to Labor Code § 204b, employers must pay its
2 employees on a weekly basis on a regular day determined by the employer as the
3 regular payday.

4 183. Pursuant to Labor Code §§ 218.5 and 218.6, an action may be brought for
5 the nonpayment of wages and fringe benefits.

6 184. Plaintiffs were not properly paid pursuant to the requirements of Labor
7 Code §§ 201, 202, and 204/204b and thereby seek all remedies available to them.

8 185. To date, for example, Defendants have not paid Plaintiffs all earned wages
9 as required by law.

10 186. Plaintiffs are informed and believe and based thereon allege that
11 Defendants willfully failed to pay Plaintiffs' wages pursuant to the requirements of
12 Labor Code §§ 201, 202, and 204/204b, after Plaintiffs' demand and, therefore,
13 Plaintiffs may recover the associated unpaid wages and waiting time penalties.

14 187. Plaintiffs are informed and believe and based thereon allege that
15 Defendants did this with the intent to secure for himself, herself, and itself a discount
16 on its indebtedness and/or with intent to annoy harass, oppress, hinder, delay and/or
17 defraud Plaintiffs.

18 188. At all material times, DEFENDANT EMPLOYER and DOES 1 through
19 50 were and/or are Aggrieved Employees' employers or persons acting on behalf of
20 Aggrieved Employees' employer, within the meaning of California Labor Code § 558,
21 who violated or caused to be violated, a section of Part 2, Chapter 1 of the California
22 Labor Code or any provision regulating hours and days of work in any Order of the
23 Industrial Welfare Commission and, as such, are subject to penalties for each
24 underpaid employee as set for in Labor Code § 558.

25 189. In committing the violations of state law as herein alleged, Defendants
26 have knowingly and willfully refused to perform their obligations to compensate
27 Aggrieved Employees for all wages earned and all hours worked.

28 190. As a direct result, Aggrieved Employees have suffered and continue to

1 suffer, substantial losses related to the use and enjoyment of such compensation,
2 wages, lost interest on such monies and expenses and attorney's fees in seeking to
3 compel Defendants to full perform their obligation under state law, all to their
4 respective damage in amounts according to proof at trial and within the jurisdictional
5 limitations of this Court.

6 191. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them, a
7 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
8 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
9 pay period for each subsequent violation in which DEFENDANT EMPLOYER
10 violated Labor Code §§ 201, 202, 203, and 204/204b. The exact amount of the
11 applicable penalty is all in an amount to be shown according to proof at trial.

12 192. Plaintiffs were deprived of their rightfully earned wages as a direct and
13 proximate result of Defendants' failure and refusal to pay said compensation and for
14 the reasons alleged in this Complaint.

15 193. Plaintiffs and Class Members request the unpaid wages, waiting time
16 penalties, interest, attorneys' fees, costs, damages, and other remedies in an amount to
17 be proven at trial.

18 **EIGHTH CAUSE OF ACTION**

19 **Representative Claim for PAGA Penalties**

20 **For Failure to Maintain and Provide Required Records in Violation of** 21 **California Labor Code §§ 226, 432, 1174, 1198.5, 2751, 2810.5,** 22 **and the Applicable Wage Order and/or § 1198**

23 (Against all Defendants)

24 194. Plaintiffs re-allege and incorporate by reference the foregoing allegations
25 as though set forth herein.

26 195. California Labor Code § 226, subdivision (b), requires employers doing
27 business in the State of California to "afford current and former employees the right
28 to inspect or copy records pertaining to their employment, upon a reasonable request

1 to the employer...” and subdivision (c), requires employers to produce such records
2 within “21 calendar days from the date of the request.”

3 196. Plaintiff maintains the records requested fall within the meaning of
4 Labor Code § 226 because, among other reasons, the requested documents are
5 “records pertaining to [his] employment.”

6 197. California Labor Code § 432, subdivision (b), requires employers doing
7 business in the State of California to provide current, former employees, and
8 applicants copies of all written instruments they sign upon request.

9 198. Plaintiff maintains the records requested fall within the meaning of
10 Labor Code § 432 because some of the records requested constitute written
11 instruments the Plaintiff signed.

12 199. California Labor Code § 1198.5, *et seq.*, similarly provides current and
13 former employees the right to inspect their employee personnel records and requires
14 the employer to provide the employee access to such records no later than 30 calendar
15 days from the date the employer receives a written request.

16 200. Plaintiff maintains the records requested fall within the meaning of
17 Labor Code § 1198.5, *et seq.* because they were part of and/or related to Plaintiff’s
18 personnel file within the meaning of Labor Code § 1198.5.

19 201. California Labor Code § 2751 requires employers who pay its
20 employees commissions (i.e., the named Plaintiff here and others) to have a written
21 agreement that describes how commissions are “computed and paid,” which
22 agreement must be signed by all applicable employees.

23 202. California Labor Code § 2810.5 requires employers to furnish
24 employees with written notice provided at the time of hire that complies with all
25 aspects of the statute, namely, providing the employee with written notice of their rate
26 of pay, the name of their employer, etc.

27 203. Section 7 of the typical Wage Order requires every employer to
28 maintain time and payroll records.

205. Further, Plaintiffs are informed and believe and based thereon alleges that during all times relevant, Defendants failed to comply with § 7 of the applicable IWC Orders and with Labor Code § 1174 by failing to maintain certain records which employers are required to maintain, including but not limited to, an accurate record indicating the number hours worked by the Plaintiffs, evidenced in part by Defendants failure to provide the named Plaintiff's time records despite his request.

206. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred (\$200.00) for each aggrieved employee per pay period for each subsequent violation in which all culpable Defendants violated the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount of the applicable penalty is in an amount to be shown according to proof at trial.

207. For the reasons alleged herein, Plaintiffs seek all remedies available to them including but not limited to attorneys' fees, costs, interest, and penalties pursuant to the PAGA, the Labor Code, and permissible by law in an amount to be proven at trial.

Individual Claims for

(Against all Defendants)

27 208. Plaintiff BARNETT re-alleges and incorporates by reference the
28 foregoing allegations as though set forth herein.

1 209. Pursuant to California Civ. Code § 1786, *et seq.*, it is presumptively
2 unlawful for a consumer reporting agency to furnish an investigative consumer report
3 for employment purposes unless the procurer of the report complies with all aspects
4 of California Civ. Code § 1786, *et seq.*

5 210. The ICRAA requires that, before procuring a consumer report on an
6 individual for employment purposes, the employer must comply with all the
7 following:

- 8 (A) The person procuring or causing the report to be made has a
 permissible purpose, as defined in Civ. Code § 1786.12.
9 (B) The person procuring or causing the report to be made provides a clear
 and conspicuous disclosure in writing to the consumer at any time
10 before the report is procured or caused to be made in a document that
 consists solely of the disclosure, that:
11 (i) An investigative consumer report may be obtained.
12 (ii) The permissible purpose of the report is identified.
13 (iii) The disclosure may include information on the consumer's
 character, general reputation, personal characteristics, and mode of living.
14 (iv) Identifies the name, address, and telephone number of the
 investigative consumer reporting agency conducting the investigation.
15 (v) Notifies the consumer in writing of the nature and scope of the
 investigation requested, including a summary of the provisions of Civ.
16 Code § 1786.22.
17 (vi) Notifies the consumer of the Internet Web site address of the
 investigative consumer reporting agency identified in clause (v), or, if the
18 agency has no Internet Web site address, the telephone number of the
 agency, where the consumer may find information about the investigative
19 reporting agency's privacy practices, including whether the consumer's
 personal information will be sent outside the United States or its territories
20 and information that complies with subdivision (d) of Civ. Code §
 1786.20. This clause shall become operative on January 1, 2012.

21 (Civ. Code § 1786.16, subd. (a)(2)(B).)

22 211. Plaintiff is informed and believes and based thereon alleges that
23 Defendants violated Civ. Code § 1786.16 because the disclosure form Defendant
24 required Plaintiff to sign failed to comply with Civ. Code § 1786.16, *et seq.*,
25 Defendants failed to provide a copy of the report and consent form he requested,
26 Defendants failed to provide the proper certifications to the consumer reporting
27 agency that procured his report, among other reasons.
28

212. With respect to each violation of the ICRAA provisions and pursuant to Civ. Code § 1786.50(a)(1), Plaintiff seeks to recover statutory damages in the amount of no less than \$10,000 due to Defendants' failure to comply with the requirements imposed by Civ. Code § 1786, *et seq.*, all in an amount to be proven at trial.

213. Plaintiff seeks recovery costs of suit with reasonable attorneys' fees in an amount as the Court may allow.

TENTH CAUSE OF ACTION

Individual and Class Claim for Remedies for Violations of the California Unfair Business Practices Code §§ 17200, *et seq.*

(Against all Defendants)

214. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

215. Defendants, and each of them, are "persons" as defined under Business and Professions Code § 17021.

216. Plaintiffs are informed and believe and based thereon allege that Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating the laws alleged to have been violated in this Complaint and which allegations are incorporated herein by reference and which allegations include, but are not limited to:

- a. Failing to provide the Class and Plaintiffs an accurate itemized wage statement in violation of § 226 of the Labor Code;
- b. Failing to pay the Class and Plaintiffs all wages due and owing including minimum/regular wages and overtime compensation, minimum wages and overtime, and meal and rest break premiums;
- c. Failure to reimburse employees for all employer incurred

1 expenses; and

2 d. Failure to pay Class Members, including Plaintiffs,
3 wages in a timely manner upon their termination or
4 resignation.

5 217. Defendants' conduct, as alleged above, constitutes unlawful, unfair, and
6 fraudulent activity prohibited by Business and Professions Code §§ 17200, *et seq.*

7 218. The unlawful and unfair business practices conducted by Defendants,
8 and each of them, are ongoing and present a threat and likelihood of continuing
9 against Plaintiffs and, accordingly, Plaintiffs seek injunctive relief where appropriate.

10 219. Plaintiffs have suffered injury in fact and lost money or property because
11 of the aforementioned unfair competition.

12 220. Because of their improper acts, Defendants, and each of them, have
13 reaped and continue to reap unfair benefits and illegal profits at the expense of
14 Plaintiffs and other employees and former employees of Defendants, and each of
15 them.

16 221. Defendants, and each of them, should be enjoined from this activity and
17 made to disgorge these ill-gotten gains and restore to Plaintiffs and the Class the
18 wrongfully withheld wages and/or penalties, pursuant to Business and Professions
19 Code §§ 17202 and/or 17203.

20 222. Plaintiffs and the Class have also incurred and continue to incur
21 attorneys' fees and legal expenses in an amount according to proof at the time of trial
22 and for which they seek compensation pursuant to law including but not limited to
23 Code of Civil Procedure § 1021.5.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

26 1. An order that this action may proceed and be maintained as a class
27 action;

28 2. For appointment of the named Plaintiffs as the representatives of the

1 Class;

2 3. For appointment of counsel for Plaintiffs as Class Counsel;

3 4. That the Court find that Defendants' violations as described above were
4 willful;

5 5. That the Court award to Plaintiffs and/or the Class and/or Aggrieved
6 Employees damages for the amount of unpaid wages subject to proof at trial;

7 6. For payment of all unpaid wages, including but not limited to state
8 minimum wages and overtime compensation to Plaintiffs and/or the Class and/or
9 Aggrieved Employees in an amount subject to proof at trial;

10 7. That Defendants, and each of them, be ordered and enjoined to pay
11 restitution to Plaintiffs and/or the Class and/or Aggrieved Employees pursuant to
12 Business and Professions Code §§ 17200-05;

13 8. That Defendants, and each of them, be required to issue to Plaintiffs
14 and/or the Class and/or Aggrieved Employees accurate wage and earning
15 statements;

16 9. For disgorgement through restitution of all ill-gotten and/or ill-gained
17 profits, including unpaid wages and/or penalties to Plaintiffs and/or the Class and/or
18 Aggrieved Employees, resulting from Defendants' unfair business practices pursuant
19 to Business and Professions Code §§ 17200-05;

20 10. For an order by the Court requiring Defendants, and each of them, to
21 show cause, if any they have, as to why to Plaintiffs and/or the Class and/or
22 Aggrieved Employees should not have been be issued itemized wage statements as
23 required by § 226 of the Labor Code and why Defendants should not be required to
24 pay Plaintiffs minimum wages and overtime compensation under applicable state law;

25 11. For damages in an amount to be proven at trial;

26 12. For all remedies available to Plaintiffs under the applicable Industrial
27 Welfare Commission Order and the Labor Code, including but not limited to §§ 90.5,
28 200, 201, 202, 203, 204 and/or 204b, 204.1, 216, 218, 218.5, 221, 222, 223, 224,

1 225.5, 226, 226.3, 226.6, 227.6, 245, 245.5, 246, 246.5, 247, 247.5, 248.5, 249, 432,
2 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and
3 2802 via PAGA Labor Code § 2698, *et seq.* including an award of unpaid wages,
4 attorneys' fees, costs, interest, liquidated damages, damages, penalties and waiting
5 time penalties according to proof to the extent permitted by law;

6 13. For maximum civil penalties available under the Labor Code and
7 applicable Wage Order as described more particularly in this Complaint,
8 representative PAGA claims including the payment of wages as set forth in Labor
9 Code § 558;

10 14. For Labor Code § 226(e) penalties in the amount of \$4,000.00;

11 15. For Labor Code § 203 penalties in an amount to be proven at trial;

12 16. For special and general damages;

13 17. That Plaintiffs and/or the Class and/or Aggrieved Employees be
14 awarded reasonable attorneys' fees where available by law, including but not limited
15 to pursuant to Labor Code §§ 2698, *et seq.*, Code of Civil Procedure § 1021.5, and/or
16 other applicable laws; and

17 18. Such other and further relief as this Court may deem proper and just.

18 Dated: May 25, 2022

Law Office of
Thomas D. Rutledge

20 By: Thomas D. Rutledge
21 /s/Thomas D. Rutledge
22 Attorneys for Plaintiffs
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of this matter.

Dated: May 25, 2022

Law Office of
Thomas D. Rutledge

By: *Thomas D. Rutledge*_____
/s/Thomas D. Rutledge
Attorney for the Plaintiffs