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Assigned for All Purposes
Judge Peter Wilson
CX-102

Attorneys for BRENDAN SMITH on behalf of himself,
all others similarly situated, and on behalf of the general public.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE**

BRENDAN SMITH, on behalf of
himself and all others similarly situated,
and on behalf of the general public,

Plaintiff,

v.

NORTH AMERICAN VIDEO
CORPORATION; and DOES 1-100,

Defendants.

Case No. 30-2022-01277262-CU-OE-CXC

**PLAINTIFF BRENDAN SMITH'S PAGA
COMPLAINT**

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.);
2. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Overtime Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.);
3. Violation of PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.);
4. Violation of PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)
5. Violation of PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.);
6. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (Cal. Lab. Code § 2698, et. seq.)
7. Violation of PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.);
8. Violation of PAGA for Failure to Reimburse/Illegal Deductions (Cal. Lab. Code § 2698, et. seq.); and
9. Violation of PAGA for Willful Misclassification of Employees as Independent Contractors (Cal. Lab. Code § 2698, et. seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff BRENDAN SMITH (hereinafter “Plaintiff”), on behalf himself and all others similarly
2 aggrieved employees (hereinafter “aggrieved employees”), files this Complaint against Defendant
3 NORTH AMERICAN VIDEO CORPORATION (hereinafter “Defendant” or “NAVCO”) and/or
4 DOES 1-100.

5
6 **I. INTRODUCTION**

7 1. This is a representative action seeking recovery of penalties under the California Labor Code
8 Private Attorney General Act of 2004 (PAGA), California Labor Code § 2698 *et. seq.*, against
9 Defendant and/or DOES 1-100. The PAGA permits an “aggrieved employee” to bring a
10 lawsuit on behalf of himself and other current and former employees to address an employer’s
11 violations of the California Labor Code.

12 2. This action is brought on behalf of Plaintiff and all other aggrieved employees of Defendant
13 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
14 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
15 break; worked qualifying shifts without receiving second meal periods and second and third
16 rest breaks; were not provided accurate itemized wage statements; were not paid all wages
17 owed twice per month; were not reimbursed for business expenses; were not paid
18 compensation for all time worked at the straight time or minimum rate; were not paid waiting
19 time penalties; and were willfully misclassified as independent contractors. Plaintiff seeks
20 penalties on behalf of himself and all other aggrieved employees of Defendant and/or DOES
21 as provided herein. This Complaint also seeks attorneys’ fees and costs under the PAGA, Cal.
22 Lab. Code § 2699(g)(1).

23 3. At all times mentioned herein, Plaintiff and the other aggrieved employees were not primarily
24 employed in an executive, professional, or administrative capacity. Thus, under California law,
25 Plaintiff and the aggrieved employees should be: provided meal periods; authorized and
26 permitted to take rest periods; paid one hour of premium pay for all unprovided meal periods;
27 paid one hour of premium pay for all rest periods that were not authorized and/or permitted;
28 paid penalties for not being provided itemized wage statements; reimbursed for all business
expenses; paid compensation for all time worked at the regular or minimum rate; paid all wages

owed twice per month; paid penalties for not being paid timely at the time of termination; and properly classified as employees under California law.

4. At all times mentioned herein, Defendant and/or DOES control the working conditions of Plaintiff and the aggrieved employees including, but not limited to, having the authority to hire and fire Plaintiff and the other aggrieved employees, setting the wages of Plaintiff and the other aggrieved employees, and instructing Plaintiff and the other aggrieved employees when and/or where to work. In addition, Defendant and/or DOES develop, wrote, dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and the aggrieved employees labored under. These policies and/or practices included, but were not limited to, policies and/or practices regarding meal periods, straight time, rest periods, wage statements, reimbursement of business expenses, paying compensation at time of termination, and timing of payment. Further, Defendant and/or DOES have the ability to prevent Plaintiff and the other aggrieved employees from working.

II. JURISDICTION AND VENUE

5. Plaintiff BRENDAN SMITH is an individual residing in California. Plaintiff was employed by Defendant and/or DOES in California. Plaintiff, and each of the aggrieved employees, were employees of Defendant and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiff and each of the aggrieved employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency (LWDA).
6. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant and/or DOE operates facilities, employs employees, conducts business, and commits California Labor Code violations within Orange County and California. Each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees situated within the State of California and within Orange County. Defendant and/or DOES employ numerous aggrieved employees in California and/or Orange County.
7. Plaintiff brings this action on behalf of himself and the other aggrieved employees of

Defendant and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.

8. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the California Labor Code, IWC Wage Orders, Code of Civil Procedure, and Civil Code.

9. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendant and/or DOES either own, maintain offices, transact business, have an agent or agents, have their principal place of business in, and/or otherwise are found within the County of Orange, California.

III. THE PARTIES

A. Plaintiff

10. Plaintiff BRENDAN SMITH, a former employee of Defendant and/or DOES, and similar aggrieved employees were and are entitled to statutory meal periods, statutory rest periods, accurate itemized wage statements, payment of wages owed twice a month, reimbursed for business expenses, compensation for all time worked at the regular and minimum rate, compensation for all overtime hours worked at the overtime rate, to be paid timely, to be properly classified as employees pursuant to California law, and to receive timely wages at the time of termination from Defendant and/or DOES.

11. Plaintiff and similar aggrieved employees were and are persons in the State of California who performed services for Defendant to install and maintain CCTV and alarm systems, whom Defendant and/or DOES classified as independent contractors during the period of the relevant statute of limitations.

12. A notice correspondence showing compliance with *Cal. Lab. Code* § 2699.3 was sent to the LWDA and Defendant on May 23, 2022. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA and as a private attorney general. No notice of cure by Defendant and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized by *Cal. Lab. Code* § 2699.3(a)(2)(C).

B. Defendant

13. Defendant and/or DOES are video security system (CCTV) and alarm system installer and maintenance companies. Defendant and/or DOES specialize in providing gaming system design, installation, and integration. Defendant and/or DOES install and maintain CCTV and alarm systems for businesses such as Starbucks and Dutch Bros.

14. Despite misclassifying workers as independent contractors, Defendant and/or DOES were the employer of Plaintiff and the aggrieved employees. Plaintiff and those similarly situated workers work under the control and direction of Defendant and/or DOES in connection with the performance of work, both under the contract for hire for the performance of work and for the performance of work in fact. Plaintiff and those similarly situated workers do not perform work that is outside Defendant’s and/or DOES’ usual course of business, and Defendant and/or DOES retain the right to control Plaintiff and the aggrieved employees’ work details. The work performed by Plaintiff and those similarly situated constitute an integral, if not an essential, part of Defendant’s and/or DOES’ business. As such, Defendant and/or DOES are the employer of Plaintiff and those similarly situated and owes the statutory protections the California Labor Code affords employees, such as the right to compliant meal and rest periods, the payment of wages for all hours worked, properly itemized wage statements, and the payment of all wages owed at the time of termination, and reimbursement of all business-related expenses.

15. Defendant and/or DOES retain the right to control the manner and means of accomplishing the desired result of installing and maintaining CCTV and alarm systems for Defendant’s and/or

1 DOES' customers.

2 16. Defendant and/or DOES, not Plaintiff or the aggrieved employees, set the prices for its
3 services.

4 17. Defendant and/or DOES, not Plaintiff or the aggrieved employees, set the duration of time
5 Plaintiff and the Class have to perform the service.

6 18. Plaintiff and the aggrieved employees provide installation and maintenance services to
7 Defendant's and/or DOES' customers.

8 19. The true names and capacities, whether individual, corporate, associate, or otherwise, of
9 Defendants DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore sues
10 these Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff
11 is informed and believes, and based thereon alleges, that each of the Defendants designated
12 herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein.
13 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
14 capacities of the Defendants designated hereinafter as DOES when such identities become
15 known.

16 20. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects
17 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
18 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
19 attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized
20 the acts of each of the remaining Defendants.

21 21. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners,
22 agents, owners, and/or shareholders of Defendant and/or DOES and were acting on behalf of
23 Defendant and/or DOES at all times.

24 **IV. GENERAL ALLEGATIONS**

25 22. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims
26 with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendant
27 and/or DOES in the State of California. Plaintiff and the other aggrieved employees are
28 composed of all persons in the State of California who performed services for Defendant and/or

1 DOES in California and whom Defendant and/or DOES classified as independent contractors
2 during the period of the relevant statute of limitations.

3 23. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
4 Plaintiff and the aggrieved employees were entitled to be provided legally compliant meal
5 periods in a timely manner or payment of one hour of pay as additional compensation at
6 Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely,
7 uninterrupted meal period.

8 24. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift
9 of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and by
10 failing to provide compensation for these unprovided meal periods, Defendant and/or DOES
11 willfully violated the provisions of *Cal. Lab. Code* § 226.7, IWC Wage Order No. 5-2001, and
12 California Code of Regulations, Section 11050(11). In addition, Defendant and/or DOES failed
13 to provide Plaintiff and the other aggrieved employees another duty-free meal period of not
14 less than thirty (30) minutes for every shift of more than ten (10) hours per day.

15 25. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
16 Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to take
17 legally compliant rest periods in a timely manner or payment of one hour of pay as additional
18 compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they were
19 not authorized and/or permitted to take a legally compliant rest period.

20 26. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction
21 thereof, worked per day by Plaintiff and all aggrieved employees and by failing to provide
22 compensation for these periods, Defendant and/or DOES willfully violated the provisions of
23 *Cal. Lab. Code* § 226.7, IWC Wage Order No. 5-2001, and California Code of Regulations,
24 Section 11050(12).

25 27. At all times mentioned herein, Defendant and/or DOES failed to pay all wages owed to Plaintiff
26 and to other terminated or resigned members of the aggrieved employees and failed to timely
27 pay wages during employment.

28 28. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the aggrieved

1 employees all wages earned twice per month.

2 29. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
3 Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay
4 statements in accordance with California law.

5 30. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
6 they were not providing complete and accurate pay statements in accordance with California
7 law to Plaintiff and the aggrieved employees.

8 31. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
9 they failed to reimburse Plaintiff and the aggrieved employees for all business expenses
10 incurred in the discharge of their duties.

11 32. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
12 they were illegally deducting wages from Plaintiff and the aggrieved employees for expenses
13 incurred by Defendant and/or DOES in running their business and passing those expenses off
14 to Plaintiff and the aggrieved employees.

15 33. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
16 they had a duty to compensate Plaintiff and the other aggrieved employees in accordance with
17 California law, and that Defendant and DOES had the ability to pay such compensation, but
18 willfully and intentionally failed to do so, and Defendant and DOES falsely represented to
19 Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff and
20 the other aggrieved employees.

21 34. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
22 Plaintiff and the other aggrieved employees were entitled to timely wages at the time of
23 termination. Defendant and/or DOES did not pay all timely wages owed, straight-time wages
24 owed, meal period premiums, and/or rest period premiums owed at the time of termination.

25 35. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the other
26 aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours
27 of their resignation, and have failed to pay those sums for thirty (30) days thereafter.

28 36. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that

they were misclassifying Plaintiff and the other aggrieved employees as independent contractors in clear violation of California law.

37. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as all persons in the State of California who performed services for Defendant and/or DOES in California and whom Defendant and/or DOES classified as independent contractors during the period of the relevant statute of limitations, and all others similarly situated of Defendant and/or DOES in California, employed beginning one year prior to the date Plaintiff sent Notice to the LWDA.

38. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with respect to the issues or in any other way.

FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code §2698 et. seq.).

39. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

40. Section 1197.1 of the *California Labor Code* states “[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.” Under section 1194 of the California Labor Code, employees paid less than the state minimum wage are entitled to recover all minimum wage owed, plus attorneys fees and interest. Industrial Welfare Commission Order No. 5-2001 section 4(B) states “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.” Under California Labor Code section 1194.2, an employee receiving less than the state minimum wage, is also entitled to recover liquidated damages in an amount equal to the amount of minimum wage owed.

41. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and similarly

aggrieved employees for all hours worked. For example, Defendant and/or DOES fail to pay Plaintiff and the Aggrieved Employees for the following hours worked: time spent driving to and from customer's locations, and all other time during which Plaintiff and the Aggrieved Employees are subject to the control of Defendant and/or DOES and/or are suffered or permitted to work during periods of time for which Defendant and/or DOES are not paying them. Failing to pay for all hours worked while under Defendant's and/or DOES' control and/or while suffered or permitted to work has resulted in Plaintiff and the Aggrieved Employees being deprived of wages.

42. It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code section 1197 prohibits the payment of less than the minimum wage. Labor Code section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

43. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

44. Defendant and/or DOES committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and the aggrieved employees. Defendant and/or DOES acted with malice or in conscious disregard of Plaintiff's and the aggrieved employees' rights.

45. These claims are on behalf of Plaintiff and all persons in the State of California who performed services for Defendant and/or DOES in California and whom Defendant and/or DOES classified as independent contractors during the period of the relevant statute of limitations, and all others similarly situated of Defendant and/or DOES in California.

1 46. Plaintiff, as a former non-exempt employee of Defendant and/or DOES who Defendant and/or
2 DOES failed to pay all wages, is an aggrieved employee with standing to bring an action under
3 the PAGA. Plaintiff satisfied all prerequisites to serve as representatives of the general public
4 to enforce California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* §
5 2699.5.

6 47. Plaintiff, as a representative of the people of the State of California, will seek any and all
7 penalties otherwise capable of being collected by the Labor Commission and/or the
8 Department of Labor Standards Enforcement (DLSE). This includes each of the following, as
9 set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any
10 alleged violation of the following provisions: sections 226.2, 510, 1194, 1197, and 1199.

11 48. Pursuant to *Cal. Lab. Code* § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
12 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Cal.*
14 *Lab. Code* § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
15 pay period for each subsequent violation, per *Cal. Lab. Code* § 2699(f)(2).

16 49. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
17 employees, seeks penalties pursuant to *Cal. Lab. Code* § 558 for violations pursuant to this
18 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
19 Commission under *Cal. Lab. Code* § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
20 pursuant to *Cal. Lab. Code* § 558(a).

21 **SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the PAGA**
22 **for Failure to Pay All Overtime Wages Owed (*Cal. Lab. Code* §2698 et. seq.).**

23 50. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
24 as if fully plead.

25 51. California Labor Code section 510 states that eight hours of labor constitutes a day's work.
26 Any work in excess of eight hours in one workday and any work in excess of 40 hours in any
27 one workweek and the first eight hours worked on the seventh day of work in any one
28 workweek shall be compensated at the rate of no less than one and one-half times the regular

1 rate of pay for an employee.

2 52. California Labor Code section 510 dictates that any work in excess of 12 hours in one day shall
3 be compensated at the rate of no less than twice the regular rate of pay for an employee. In
4 addition, any work in excess of eight hours on any seventh day of a workweek shall be
5 compensated at the rate of no less than twice the regular rate of pay of an employee.

6 53. Defendant and/or DOES fail to pay overtime when employees worked over eight (8) hours per
7 day and when employees worked over 40 hours per week.

8 54. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and the aggrieved
9 employees for all hours worked. For example, Defendant and/or DOES fail to pay Plaintiff and
10 the aggrieved employees for the following hours worked: time spent driving to and from
11 customer's locations, and all other time during which Plaintiff and the aggrieved employees
12 are subject to the control of Defendant and/or DOES and/or are suffered or permitted to work
13 during periods of time for which Defendant and/or DOES are not paying them. Failing to pay
14 for all hours worked while under Defendant's and/or DOES' control and/or while suffered or
15 permitted to work has resulted in Plaintiff and the aggrieved employees being deprived of
16 overtime wages.

17 55. Plaintiff and the aggrieved employees were deprived of wages for all overtime hours worked
18 because Defendant and/or DOES fail to pay them overtime wages for all overtime hours
19 worked. This resulted in Plaintiff and the aggrieved employees not being paid all overtime
20 wages owed to them.

21 56. In addition, Plaintiff and the aggrieved employees were deprived of overtime wages because
22 Defendant and/or DOES fail to pay them double time when they worked over ten hours in a
23 day. This resulted in Plaintiff and the aggrieved employees not being paid all overtime wages
24 owed to them.

25 57. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
26 wages, and lost interest on such wages, and expenses.

27 58. These claims are on behalf of Plaintiff and all persons in the State of California who performed
28 services for Defendant and/or DOES in California and whom Defendant and/or DOES

classified as independent contractors during the period of the relevant statute of limitations, and all others similarly situated of Defendant and/or DOES in California.

59. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of California Labor Code section 510.

60. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in California Labor Code section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, 512 and 518.

61. Pursuant to California Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per California Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per California Labor Code section 2699(f)(2).

In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to California Labor Code section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under California Labor Code sections 558(a)(1) and 558(a)(2).

Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (Cal. Lab. Code §2698 et. seq.).

62. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

63. Under Cal. Lab. Code § 512, and IWC Wage Order 5-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not

less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

64. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

65. Under Cal. Lab. Code § 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

66. Defendant and/or DOES breached the legal duty to provide meal periods to employees. Hiding behind its misclassification of Plaintiff and the aggrieved employees as independent contractors, Defendant and/or DOES have not provided thirty (30) minute, uninterrupted meal periods to Plaintiff and the aggrieved employees who worked for work periods of more than five (5) consecutive hours. As such, Plaintiff and the aggrieved employees were required to work over five (5) consecutive hours at a time without being provided a thirty (30) minute uninterrupted meal period within that time.

67. Defendant and/or DOES have failed to provide thirty (30) minute, uninterrupted meal periods to Plaintiff and the aggrieved employees for every five (5) continuous hours worked.

68. In addition, due to its internal policies and practices applicable to Plaintiff and the aggrieved employees, Defendant and/or DOES have not permitted duty-free/control-free thirty-minute meal periods. Thus, Plaintiff and the aggrieved employees have not been able to take meal periods.

69. Additionally, Defendant and/or DOES institute a consistent policy/practice of not providing second meal periods to Plaintiff and all aggrieved employees and/or providing compensation

1 in lieu thereof. Specifically, Plaintiff and the aggrieved employees are required to work ten
2 (10) to twelve (12) hour shifts but never received second meal periods.

3 70. Further, because Defendant and/or DOES fail to provide meal periods, Defendant and/or
4 DOES fail to keep any records of the times Plaintiff and the aggrieved employees take meal
5 periods.

6 71. By failing to provide statutory first and/or second meal periods, and by failing to provide
7 compensation for unprovided meal periods, as alleged above, Defendant and/or DOES
8 willfully violated the provisions of the Cal. Lab. Code §§ 226.7 and 512.

9 72. These claims are on behalf of Plaintiff and all persons in the State of California who performed
10 services for Defendant and/or DOES in California and whom Defendant and/or DOES
11 classified as independent contractors during the period of the relevant statute of limitations,
12 and all others similarly situated of Defendant and/or DOES in California.

13 73. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
14 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
15 has satisfied all prerequisites to serve as a representative of the general public to enforce
16 California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* § 2699.5.

17 74. Plaintiff, as a representative of the people of the State of California, will seek all penalties
18 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
19 each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that Section
20 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

21 75. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
22 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
23 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
24 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
25 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

26 76. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
27 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
28 chapter or any provisions regulating hours and days of the week of the Industrial Welfare

Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (Cal. Lab. Code §2698 et. seq.).

77. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

78. Industrial Welfare Commission Order No. 5-2001 section 12(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

79. Defendant and/or DOES have had a consistent policy and/or practice of not providing rest periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Plaintiff and the aggrieved employees are required to work ten (10) to twelve (12) hour shifts but never received first, second, third, or fourth rest breaks. Hiding behind its misclassification of Plaintiff and all aggrieved employees as independent contractors, Defendant and/or DOES have not provided ten-minute rest periods to Plaintiff and all aggrieved employees who worked four hours or a major fraction thereof during the workday.

80. In addition, due to its internal policies and practices applicable to Plaintiffs and the aggrieved employees, Defendant and/or DOES have not permitted duty-free/control-free ten-minute rest periods. Thus, Plaintiff and the aggrieved employees have not been able to take rest periods.

81. Furthermore, Defendant and/or DOES have breached the legal duty to provide rest periods to employees by imposing a continuous and consistent policy requiring Plaintiff and the aggrieved employees to work through their rest periods to satisfy the demanding workload duties imposed by Defendant and/or DOES, thereby denying Plaintiff and the aggrieved employees of the right to be completely free from employer control under California law.

82. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per

1 day by Plaintiff and the aggrieved employees, and by failing to provide compensation for these
2 unprovided periods, as alleged above, Defendant and/or DOES willfully violated the
3 provisions of Cal. Lab. Code § 226.7.

4 83. These claims are on behalf of Plaintiff and all persons in the State of California who performed
5 services for Defendant and/or DOES in California and whom Defendant and/or DOES
6 classified as independent contractors during the period of the relevant statute of limitations,
7 and all others similarly situated of Defendant and/or DOES in California.

8 84. Plaintiff—a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest
9 periods—is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
10 has satisfied all prerequisites to serve as a representative of the general public to enforce
11 California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for
12 violations of Cal. Lab. Code § 226.7.

13 85. Plaintiff, as a representative of the people of the State of California, will seek all penalties
14 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
15 each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that section
16 2699.3(a) applies to any alleged violation of the following provisions: section 226.7.

17 86. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
18 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
19 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
20 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
21 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

22 87. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
23 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
24 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
25 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
26 pursuant to Cal. Lab. Code § 558(a).

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FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code §2698 et. seq.).

88. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

89. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to Plaintiff and the other aggrieved employees who left Defendant's and/or DOES' employ or who were terminated.

90. Plaintiff and/or the other aggrieved employees who ended their employment with Defendant and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by Cal. Lab. Code §§ 201 through 203.

91. At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours 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.

92. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay Plaintiff and the other aggrieved employees who are no longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Defendant's and/or DOES' employ.

93. Defendant's and/or DOES' failure to pay Plaintiff and the aggrieved employees who are no longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Defendant's and/or DOES' employ, is in violation of Cal. Lab. Code §§ 201 and 202.

94. Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until action is commenced; but the

1 wages shall not continue for more than thirty (30) days.

2 95. These claims are on behalf of Plaintiff and all persons in the State of California who performed
3 services for Defendant and/or DOES in California and whom Defendant and/or DOES
4 classified as independent contractors during the period of the relevant statute of limitations,
5 and all others similarly situated of Defendant and/or DOES in California.

6 96. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to pay all wages due
7 at termination, is an aggrieved employee with standing to bring an action under the
8 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
9 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
10 2699.5.

11 97. Plaintiff, as a representative of the people of the State of California, seeks all penalties
12 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
13 Standards Enforcement ("DLSE"). This includes each of the following, as set forth in Cal. Lab.
14 Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the
15 following provisions: sections 201 through 203.

16 98. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
17 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
18 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
19 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
20 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

21 99. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
22 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
23 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
24 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
25 pursuant to Cal. Lab. Code § 558(a).

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SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 2698 et. seq.).

100. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

101. Cal. Lab. Code § 226 subdivision (a) requires Defendant and/or DOES to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the other aggrieved employees. Cal. Lab. Code § 226(a) requires Defendant and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees, either as an detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee...(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee....”

102. Cal. Lab. Code § 226, subdivision (a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dates, showing the month, day and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

103. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to provide Plaintiff and the aggrieved employees with wage statements at the time of each

1 payment.

2 104. Even if the wage statements were provided adequately, Defendant and/or DOES have
3 knowingly and intentionally failed to comply with Cal. Lab. Code § 226(a) on each and every
4 wage statement provided to Plaintiff and the other aggrieved employees.

5 105. In every pay period during the period of the relevant statute of limitations, Defendant and/or
6 DOES knowingly and intentionally did not itemize the total hours worked on wage statements
7 as Cal. Lab. Code § 226 (a), requires. In every pay period during the period of the relevant
8 statute of limitations, Defendant and/or DOES knowingly and intentionally did not include the
9 total hours worked on wage statements and failed to include this information accurately.
10 Defendant and/or DOES therefore knowingly and intentionally failed to itemize the total hours
11 worked on Plaintiff's and the aggrieved employees' wage statements.

12 106. In every pay period during the period of the relevant statute of limitations, Defendant and/or
13 DOES knowingly and intentionally did not include Plaintiff's and the aggrieved employees'
14 net wages on wage statements and failed to itemize this amount accurately. In every pay period
15 during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and
16 intentionally did not include all deductions on Plaintiffs' and the aggrieved employees' wage
17 statements and/or failed to itemize deductions accurately. In every pay period during the period
18 of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did
19 not include the inclusive dates for which the employees are paid or the last four digits of the
20 aggrieved employees social security number or an employee identification number and/or
21 failed to itemize this information accurately.

22 107. In every pay period during the period of the relevant statute of limitations, Defendant and/or
23 DOES knowingly and intentionally did not include the name of the legal entity that is the
24 employer thereby failing to furnish accurate itemized statements. *See, e.g.*, Cal. Lab. Code
25 226(a)(8). Plaintiff and the aggrieved employees could not promptly and easily determine the
26 employer's name from the wage statements alone.

27 108. Throughout the statutory period, because of the knowing and intentional failure by Defendant
28 and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the

1 aggrieved employees have been able to reconstruct only a reasonable estimate of the hours
2 worked and have, therefore, not received full compensation.

3 109. These claims are on behalf of Plaintiff and all persons in the State of California who performed
4 services for Defendant and/or DOES in California and whom Defendant and/or DOES
5 classified as independent contractors during the period of the relevant statute of limitations,
6 and all others similarly situated of Defendant and/or DOES in California.

7 110. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to provide accurate
8 and itemized wage statements, is an aggrieved employee with standing to bring an action under
9 the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public
10 to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
11 2699.5.

12 111. Plaintiff, as a representative of the people of the State of California, will seek all penalties
13 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
14 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section
15 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174,
16 1199.

17 112. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
18 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
19 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
20 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
21 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

22 113. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
23 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
24 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
25 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
26 pursuant to Cal. Lab. Code § 558(a).

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SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month (Cal. Lab. Code § 2698 et. seq.).

114. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

115. Section 204(a) of the *California Labor Code* requires that 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.

116. *Cal. Lab. Code* § 226 subdivision (a) provides “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month.”

117. Defendant and/or DOES have a consistent policy and/or practice of failing to pay Plaintiff and the aggrieved employees twice per month. By failing to pay employees twice per month, Defendant and/or DOES willfully violated the provisions of *Cal. Lab. Code* § 204(a).

118. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month.

119. Defendant and/or DOES failure to pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month, is in violation of *Cal. Lab. Code* § 204.

120. These claims are on behalf of Plaintiff and all persons in the State of California who performed services for Defendant and/or DOES in California and whom Defendant and/or DOES classified as independent contractors during the period of the relevant statute of limitations, and all others similarly situated of Defendant and/or DOES in California.

1 121. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed pay all wages owed
2 twice per month, is an aggrieved employee with standing to bring an action under the PAGA.
3 Plaintiff has satisfied all prerequisites to serve as a representative of the general public to
4 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
5 2699.5 for violations of Cal. Lab. Code § 204.

6 122. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
7 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
8 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
9 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
10 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

11 123. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
12 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
13 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
14 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
15 pursuant to Cal. Lab. Code § 558(a).

16 **EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
17 **Private Attorneys General Act of 2004 (PAGA) for Failing to Reimburse Employees for Business**
18 **Expenses (Cal. Lab. Code § 2698 *et. seq.*)**

19 124. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
20 as if fully plead.

21 125. Section 2802(a) of the *California Labor Code* requires “[a]n employer [to] indemnify his or
22 her employee for all necessary expenditures or losses incurred by the employee in direct
23 consequence of the discharge of his or her duties.”

24 126. Plaintiff and the aggrieved employees incurred expenses in the discharge of their duties without
25 receiving reimbursement from Defendant and/or DOES. As a direct consequence of
26 discharging their duties for Defendant and/or DOES and/or obeying Defendant's and/or
27 DOES' directions, Plaintiff and the aggrieved employees have necessarily incurred expenses
28 for which they have not been indemnified by Defendant and/or DOES, including the

1 depreciation of vehicles; fuel, maintenance, and other vehicle operating costs; use of personal
2 cellular phones; and certain tools and equipment required to perform services. Defendant
3 and/or DOES have failed to indemnify or in any manner reimburse Plaintiff and the aggrieved
4 employees for these expenditures and losses.

5 127. By requiring Plaintiffs and the aggrieved employees to pay expenses and cover losses that they
6 incurred in direct consequence of the discharge of their duties for Defendant and/or DOES in
7 obedience of Defendant's and/or DOES' direction, Defendant and/or DOES have violated and
8 continues to violate Cal. Labor Code section 2802.

9 128. As a direct and proximate result of Defendant's and/or DOES' conduct, Plaintiff and the
10 aggrieved employees have suffered substantial losses according to proof

11 129. These claims are on behalf of Plaintiff and all persons in the State of California who performed
12 services for Defendant and/or DOES in California and whom Defendant and/or DOES
13 classified as independent contractors during the period of the relevant statute of limitations,
14 and all others similarly situated of Defendant and/or DOES in California.

15 130. Plaintiff, as a non-exempt employee who incurred business expenses which Defendant and/or
16 DOES failed to reimburse, is an aggrieved employee with standing to bring an action under
17 the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general
18 public to enforce California's labor laws, and the penalty provisions identified in *Labor Code*
19 section 2699.5 for violations of *Labor Code* section 2802.

20 131. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
21 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
22 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
23 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
24 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

25 132. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
26 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
27 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
28 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages

pursuant to Cal. Lab. Code § 558(a).

NINTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of PAGA for Willful Misclassification of Employees as Independent Contractors (Cal. Lab. Code § 2698 et. seq.)

133. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

134. Under Cal. Lab. Code § 226.8 (a)(1), it is unlawful for an employer to engage in willful misclassification of an individual as an independent contractor. Per Cal. Lab. Code §226(i)(4) a willful misclassification “means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.”

135. Throughout the statutory period, Defendant and/or DOES have voluntarily and knowingly, *i.e.*, willfully, misclassified Plaintiff and the aggrieved employees as independent contractors.

136. For example, Defendant and/or DOES knew, at a minimum, the Plaintiff and the aggrieved employees have performed work within Defendant’s and/or DOES’ business. Defendant and/or DOES are in the business of installing and maintaining CCTV and alarm systems throughout California for its customers. Plaintiff and the aggrieved employees perform installation and maintenance work within Defendant’s and/or DOES’ business model – their work constitutes the essential part of Defendant’s and/or DOES’ businesses. In addition, throughout the statutory period Defendant and/or DOES have retained all necessary control over their operations in their direction of Plaintiff and the aggrieved employees’ activities. Defendant and/or DOES have controlled every necessary aspect of Plaintiff’s and the aggrieved employees’ installation and maintenance duties. Defendant and/or DOES are the employer under any applicable test and have willfully misclassified Plaintiffs and the aggrieved employees.

137. These claims are on behalf of Plaintiff and all persons in the State of California who performed services for Defendant and/or DOES in California and whom Defendant and/or DOES classified as independent contractors during the period of the relevant statute of limitations, and all others similarly situated of Defendant and/or DOES in California.

1 138. Plaintiff, as an employee who was misclassified as an independent contractor, is an aggrieved
2 employee with standing to bring an action under the PAGA. Plaintiff has satisfied all
3 prerequisites to serve as a representative of the general public to enforce California's labor
4 laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of
5 *Labor Code* section 2802.

6 139. Cal. Lab. Code § 226.8(c) subjects Defendant and/or DOES to liability of not less than ten
7 thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each
8 violation, in addition to any other penalties or fines permitted by law

9 140. Further, pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf
10 of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one
11 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
12 per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved
13 employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

14 141. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
15 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
16 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
17 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
18 pursuant to Cal. Lab. Code § 558(a).

19 **V. PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
21 for relief and judgment against Defendant and/or DOES, jointly and severally, as follows:

- 22 A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
23 B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for
24 failure to provide compliant meal periods;
25 C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
26 for each pay period during which an employee was underpaid due to failure to provide paid
27 meal periods;
28 D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
for failure to provide all rest periods;

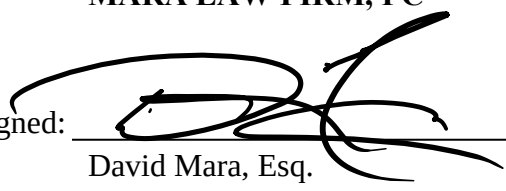
- 1 E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
2 for each pay period during which an employee was underpaid due to failure to provide paid
3 rest periods;
- 4 F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
5 for failure to timely pay wages at separation;
- 6 G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
7 for failure to provide compensation for all time worked;
- 8 H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
9 for failure to provide compensation at the minimum wage;
- 10 I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
11 for failure to provide compensation at the overtime wage;
- 12 J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
13 for failure to provide accurate, itemized wage statements;
- 14 K. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
15 for failure to pay employees all wages owed twice per month;
- 16 L. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
17 for failure to reimburse business expenses;
- 18 M. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
19 for willful misclassification of employees as independent contractors; and,
- 20 N. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff demands a jury trial.

23 **MARA LAW FIRM, PC**

24 Date: August 24, 2022

25 Signed: 

26 David Mara, Esq.

27 Jill Vecchi, Esq.

28 Attorneys for Plaintiff BRENDAN SMITH,
on behalf of himself and all others similarly
situated, and on behalf of the general public